FOR MYSORE STATE

II-27-3-50,000—6-1-

Home (1953) Department.

Ms SERIES.

G.O. NO. 851

Read 13. 3. 53.

[Despatch Abstract.]

4933
4-2-52

Examine urgently. To
R. to D. will have to
see Sri B. Kamara
a letter first?

The Secretary to Government,
Home Department,
Government of Madras,
FORT ST. GEORGE,
Madras.

HUMBLE MEMORIAL OF K. SUBRAYA AITHAL, SON OF K. VENKATANARAYANA AITHAL, GENERAL AGENT, SIRUR MUTT, UDIPI (SOUTH KANARA), respectfully sheweth:-

1. The Asta Matagalu (eight mutts) of Udipi an interconnected are famous all over India and are of great religious importance to the Madhwa Community. Your Excellency's Memoraialist is a Madhwa and is a disciple of Sri Sirur Mutt - one of these eight mutts. He is also the agent of this Mutta He is thus deeply interested in the maintenance of the fair name and prestige of these institutions.

2. Sri Vidya Ratna Theertha Swamigalavaru is the present head of Sri Krishnapur Mutt, another of these eight mutts. As such he has vast powers over the mutt and its properties and very wide discretion in dealing with them. This has been recognised by the highest courts of land (vide I.L.R. 44 M.831 - Vidya Varudhi Theertha Swamigal v. Balasu Swami Ayyar and another; and a very recent decision of the High Court of Judicature at Madras in C.M.P.No.2591/1951 dated the 13th day of December 1951.

3. Certain enemies of this Matadhipathi however, particularly Sri Aroor Lakshminarayana Rao, an Advocate, practising at Udipi persuaded the Board of Hindu Religious Endowments, Madras to frame a scheme of administration for this

this mutt. In the guise of framing such a scheme the Matadhipathi was deprived of all his legitimate powers and Sri Aroor Lakshminarayana Rao's son - one Sri A. Krishnamurti Rao was appointed as Executive Officer. The Matadhipathi filed a suit in the Court of the District Judge, South Kanara to set aside this scheme. That Court dismissed the suit and an appeal has been filed against it in the High Court of Judicature at Madras and it is pending.

4. Not content with this, these enemies of the Matadhipathi managed to convey through their henchmen to the Board of Hindu Religious Endowments, Madras, false information that the Matadhipathi has secreted or otherwise done away with some valuable movable properties of the Mutt and the Board without itself enquiring into this information and without also calling on the Executive Officer to take steps under Section 78 of the Madras Act II, 1927, laid a complaint before the Police. The Police charge-sheeted the Matadhipathi of an offence under Section 406, I.P.C. in respect of several items of movable properties and extending over a very long period of time before the First Additional First Class Magistrate, South Kanara, in C.C.No.202 of 1950. The Court has framed charge under Section 409 I.P.C. and has issued warrant for the arrest of the Matadhipathi. It will soon conclude trial and proceed to pronounce judgment. This has caused great consternation in the minds of the Devotees of the Mutt. If the Matadhipathi is once dragged to Court any amount of vindication afterwards will not undo the disgrace. It will also cause a break in the daily worship of the deity which can only be performed by the Matadhipathi and no one else

and

and this break cannot be thought of with equanimity by any orthodox Hindu.

5. The Memorialist submits that, apart from the truth of falsety of the charge, it is not sustainable, as the Matadhipathi does not come under any of the class of persons enumerated in Section 409 I.P.C. in respect of the Mutt and its properties. He has vast power over them and his discretion in dealing with them is very wide. A criminal Court can never be the forum to determine the limitation of his power and disaction and a criminal trial about his conduct, with whatever result, will also not bring any real relief to the institution. Further the provisions of the Madras Act II of 1927 and its successor, Madras Act XIX, 1951 regarding the removal of Matadhipathis and appointment of Executive Officers are ultra vires as offending articles 25 and 26 of the Constitution.

6. Under these circumstances to proceed further with C.C.No.202 of 1950 in the Court of the First Additional First Class Magistrate, South Kanara is vexatious and unjust. It will not serve any useful purpose. On the other hand it will only offend the religious sentiment of the innumerable disciples of the Mutt in particular and the Madhwa Community in general. It is learnt that the Matdhipathi has taken these proceedings as serious on his position and prestige and has consequently left the Mutt and is wandering about in shattered health.

7. It is therefore prayed that your Excellency may be pleased to direct the withdrawal of C.C.No.202 of 1950 in the Court of the First Additional First Class Magistrate, South Kanara and pending final orders may be pleased to order Stay

of

of further proceedings in the case

For which act of kindness the Memorialist shall ever pray.

L. Subramaniam Petitioner

PETITIONER.

CAMP: MADRAS,)
(
31st Jan. 1952.)

CHARGE-SHEET.

5

In the Court of the First Additional I Class Magistrate, South Kanara.

Calendar Case No. 202 of 1950.

I, Solomon Joshua, I Additional Fisrst Class Magistrate, South Kanara, hereby charge you, Vidyarathna Thirtha Swamier of the Krishnapura Mutt, Udipi, as follows:-

That you, the aforesaid Vidyarathna Thirtha Swamier, being the trustee (agent) of the Sri Kaliamardhana Krishna Devaru of the Krishnapur Mutt, Udipi, and in such capacity being entrusted on or about the end of 1939 or beginning of 1940 with the Mutt ornaments and jewels in silver and gold etc. costing in all about Rs.(300,000/-) three lakns between 1939 and 1946, committed criminal breach of trust with respect to some of the aforesaid properties costing in the aggregate about Rs(100,000) one lakh as mentioned in the list attached to this charge and thereby committed an offence punishable under Section 409 of the Indian Penal Code and within my cognizance and I thereby direct that you be tried before me on the aforesaid charge:

Dated this 21st. day of December 1950 at Mangalore.

Sd. S. Joshua,
I Additional First Class Magistrate,
South Kanara.

Appendix to charge-sheet in C.C. 202/50 on the file of the I Additional First Class Magistrate, South Kanara.

1. Peeta with its accessories viz - one big gold Prabala with lion face and serpent hood with three layered gold umbrella, gold Pakkas, gold Nishanis, gold Matta, six gold Prabalas, with umbrella, three big gold sumpustas, three small sampustas, gold chamaras, naga-sampigesaras, gold gungusaras, gold Astapatti, Mantapa, gold Nakshatramala, gold Patakas with precious stones, gold coronets with precious stones, sovereign and half sovereign saras, gold jalarai.

2. Gold arathis, gold harivanas, gold Khalasa, gold Kowlige sountu, two gold Kattigekolus, two gold Kaludepas, gold Darpana, gold parrots, gold encased right handed Balamurishanka, gold Badukas.

3. Silver Kodapanas, silver plated, silver arathis, silver Ranagale silver Kowliges and sountus, silver chembus, silver amrathis, silver sumpustas, silver gindis, silver padukas ets.

Sd. S. Joshua,
21-12-1950.
I Additional First Class Magistrate,
South Kanara.

Madras.
2-2-1952.

To
The Secretary,
Home Department,
Fort St. George,
Madras.

Sir,

I hereby declare that I have been duly instructed to appear on behalf of the petitioner.

M. Ethiraj
Advocate for Petrs.

Special.

Issue today 21/2

Home deptt.

Memo No. 19933 Pr III/52-3 dt 21.2.52

Criminal Justice - C.C. No 202 of 1950 on the file of the Addl. First Class Magistrate, Mangalore, South Kanara Dt. - Request for stay of proceedings or withdrawal of Prosecution.

Ref:- Memo No. 19933 Pr III/52-2 Home dt 13.2.52

The Collector of South Kanara is requested to ~~expedite~~ send his reply to the memo cited at once.

21.2.52 21.2.52

The Collector of South Kanara.

Depve 21/2

21/2/52

Special — Home deptt.

Memo No. 19933 Pr III/52-2 dt 13/2/52

Criminal Justice — C.C. No. 202 of 1950 on the file of the Addl. First class Magistrate, Mangalore, South Kanara — Request for stay of proceedings and withdrawal of prosecution.

Ref — From Sri K. Subraya Aithal, General Agent, Sirur Mutt, Udipi (South Kanara) dt 31.1.52

Referred to the Collector of South Kanara for ~~urgent~~ remarks ~~not later than 20.2.52~~ which should be submitted through the Commissioner H.R. and C.E (A) dept. The Collr is requested to instruct the prosecuting Counsel not to oppose the adjournment motion if the petitioner applies to the court for an adjournment on the ground that his petition for withdrawal of prosecution is pending with the Govt.

11.2.52

To the Collector of South Kanara.
with a copy of pp1-5 cf)
The Commr. H.R. & C.E.(A) dept
with a copy of pp1-5 cf

Ref: C.No.1087/51 MEC. South Kanara District Magistrate's Office, Mangalore Dated. 22.2.1952

From
Sri A. R. Rajaratnam, B.A.,
District Magistrate,
South Kanara. MANGALORE.

To
The Secretary to Government,
Home Department, Fort St. George, MADRAS.

Through
The Commissioner Hindu Religious and Charitable Endowment (Administration) Department, MADRAS.

Sir,

CRIMINAL JUSTICE : C.C.No.202/50 on the file of Additional I Class Magistrate, South Kanara --Withdrawa of prosecution -- Remarks -

Ref: Government Memo No.19933/Fr.III-52.2 Hgme Department dated 13.2.1952 ---

In the Government Memo cited above I have been asked to offer my remarks on the petition dated 31.1.1952 from Sri K. Subraya Aithal, Gen. Agent Sirur Mutt in which he has requested the withdrawal of C.C.No.202/50 on the file of A.F.C.M. South Kanara pending against Sri Vidya Ratna Teertha Swamiyar of Krishnapur Mutt, Udipi. The circumstances under which the prosecution was launched are as follows:

2 Sri Vidya Ratna Teertha Swamiyar accused in C.C.202/50 is the trustee of Krishnapur Mutt Udipi one of the renowned eight Muttas at Udipi. He was a minor when he was installed in office in the year 1935. He attained majority in 1938 and to towards the end of 1939 or at the beginning of 1940 took over the manngements of the affairs of the Math directly himself. Though the Math came under the Control of the H.R.E.Board prior to 1935 there was apparently no regular audit of the Maths accounts at any time before 1941. In September 1941 the accounts relating to two years, roughly corresponding to 1938-39 were audited and the report of the auditor disclosed certain defects in the management of the Maths affairs. It is also reported that it disclosed that the Math which owned considerabl properties had huge debts and that a proper register of valuable jewels belonging to the Math which had to be maintained under Sec.38 of the Act was not maintained, or at any rate the Swamier was not prepared to disloose it in spite of notices issued to him.. In November 1946 a scheme for the management of the Maths affairs was framed by the Board. The accused filed a suit O.S.1/47 on the file of the District Judge South Kanara against it. It was dismissed with a few amendments to the scheme settled by the Board. In 1943 a list of gold and silver jewels, vessels and other moveables owned by the Math was filed on behalf of the Math before the Board by the Manager of the Mat . As it was not in order the Swamigr was asked to prepare a fresh register in accordance with the rules. The Swamier did not how ver produce sectio 38 register at the time of the verification by the H.R.E.Inspector Udipi. The Assistant Commissioner on 5.9.45 issued a communication to the Swamier calling for an exhaustive list maintained under Sec. 38, verified and signed by the Trustee. On 1.8.46 the Commissioner H.R.E.Board visited the Krishnapur Math and on that occasion asked the Swamior to produce the jewels register of the Math which had been produced before the auditor at the time of the audit for fasli 1350. It is said that the Swamigr did not have the register and that on the same day he had a list signed by the then Manager filed before the Commissioner. That list was thereupon sent to the Assistant Commissioner for verficat... after compring withe the propeties and the register of jewels already inspected by the auditor during the course of the audit for fasli 1350. The H.R.E. Inspector reported that the entrie in the list were correct but that the jewels could not be weigh as the Swamigr did not afford facilities to do it. In the meanwhile a petition was received by the Board alleging that

p.t.o.

that the Math which was formerly one of the richest Maths in Udipi with a large income and plenty of gold properties was being mis-managed by the Swamier, that he was not observing the 'Yathi Deeksha' properly and was leading a life of pleasure. It also alleged that he had sold most of the valuables of the Math, worth more than 3 lakhs of rupees, that he had shown false debts and that he had purchased properties and bungalows in the name of his relatives from the funds he had wrongfully amassed from the math and requesting that suitable action may be taken in the matter. As there appeared to be truth in the allegations made, the Secretary H.R.E. Board addressed the District Superintendent of Police, South Kanara on 30.5.49 requesting him to investigate into it, and enclosed a copy of the petition and the statements recorded during the enquiry. He also reported that some of the jewels and valuables belonging to the Math were reported to have been either suppressed or misappropriated by the Mathadhipathy. The police conducted a thorough enquiry and laid the charge sheet on 6.4.1950 for an offence punishable under section 409 of I.P.C. The charge against the accused is that he, being the trustee (agent) of Kalinardhana Krishna Devaru of Krishnapur Mutt and in such capacity on or about May 1939 at Udipi being entrusted with certain properties, to wit gold ornaments of the deity worth in all one lakh of Rupees, committed criminal breach of trust with respect of the said properties between 1939-46. The charge sheet in this case was filed on 6.4.1950 and the trial concluded on 24.11.1951. Twenty one witnesses were examined for the prosecution and fifteen for the defence.

A large number of exhibits were marked in this case on behalf of both sides. As the case also involved several points of law, arguments were heard by the Additional I Class Magistrate on 1.12.1951, 5.12.1951, 6.12.1951 and 19.12.1951 and after hearing fully either side the case was posted to 24.12.1951 for judgment. During the trial the Swamier was allowed to be represented by a pleader who was directed to produce the accused on 24.12.1951 for judgment. When the case was called up for pronouncement of judgment, a medical certificate was produced on behalf of the accused. The case was therefore adjourned to 29-12-1951 for pronouncement of judgment. On 29.12.1951 again the accused did not turn up on grounds of ill health. The A.F.C.M. therefore issued a N.B.W. for the arrest of the accused. This N.B.W. has not yet been executed. On 8.2.1952 the A.F.C.M. issued another N.B.W. to the Inspector of Police in whose jurisdiction the accused was originally residing. On 13.2.1952 the delay in the execution of these N.B Ws was brought to the notice of the District Superintendent of Police with a request to arrange its early execution. On 8.2.1952 a petition was presented on behalf of the accused through the lawyer raising practically the same points raised in the petition dated 31.1.1952 of Sri K. Subraya Aithal and requesting the court to reopen the case for defence. As the points raised were already discussed once in detail, the A.F.C.M. rejected the petition.) The present petitioner Sri K. Subraya Aithal appears to be a general agent of the Shiroor Math. I have to mention here that the Swamier of the said Math was one of the witnesses examined on behalf of the defence in the case.

The petitioner has claimed immunity on behalf of the accused from prosecution in a court of law for criminal breach of trust and has cited in support of this I.L.R.44 M.831 (Vidya Varudhi Thurtha Swamigal V. Balasu-Swami Ayyar and another.), CMP No.2591/51 dated 13.12.1951 of the Madras High Court and section 78 of the Madras Act II.1927 (Madras Hindu Religious Endowments Act). The C.M.P. quoted above has not been reported in the law reports. In the case reported in I.L.R.44 M.831 the

the Privy Council has held that Endowments of a Hindu Mutt are not conveyed in trust nor is the head of the Mutt a trustee with regard to them save as to any specific property proved to be vested in the head for a specific and definite object. This decision was given with reference to the applicability of article 134 of schedule I of the Indian Limitation Act 1908 in connection with the grant of a permanent lease over a part of a Mutt property not proved to be subject to a specific trust. I do not think this decision is helpful to the accused in this case. At any rate this factor has been placed before the trying Magistrate on behalf of the accused. The procedure prescribed in section 78 of Madras Act II has to be followed only in a case where a person appointed as a trustee of a math or has been appointed to discharge the functions of a trustee and such person is resisted in obtaining possession of the math, records, accounts and properties etc. This section is not applicable in a case of criminal breach of trust by a Trustee.

5 It cannot be disputed that the Swamier is an agent of the deity to whom the jewels belong. The deity being the proprietor of the jewels the Swamier whether he is a trustee or not within the meaning of the term in the statute relating to the trustees is clearly an agent of the proprietor. In view of these facts the contention raised in para 5 of the petition has no force. In a proved case under section 409 IPC imprisonment is imperative and hence the anxiety of the accused and his friends to get the case withdrawn. There was no reason why the accused should not have moved for the withdrawal of the prosecution in the intial stages instead of causing a petition to be submitted to Government by a third person when the case is ripe for disposal. The representation of the petitioner that the conviction of the accused will offend the religious sentiment of the innumerable disciples of the Mutt is not correct. On the other hand it will have a deterren effect upon the trustees of other Mutts in this District The accused is a notorious person with a very bad reputatio in those parts. The progress of this case is being watche with keen interest by the public. The trial of the accuse is long over and he is evading appearing before the court to receive the sentence. A withdrawal of the case at this stage will be interpreted by the public as an unwarranted interference by the executive to save the accused from the clutches of law. I do not recommend withdrawal of the case.

Yours faithfully,

District Magistrate.

Copy to the Secretary to Government, Home Department MADRAS, direct.

Endt. No. 1993 Pr III/32-2
26/2/32

copy to H.R.E. ✓ 26/2

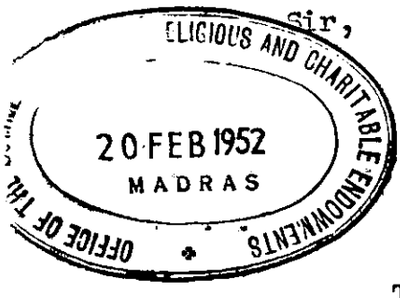
Office of the Deputy Commissioner,
Hindu Religious and Charitable Endowments,
Coimbatore.

Letter No. 2151/52-1 Adm dated. 18.2. 1952:

From
Sri N. Venkatarama Ayyar,
Deputy Commissioner.

To
The Commissioner,
H.R. & C.E., (Adm) Department,
Madras.6.

8663



Sir,

Sub:- H.R. & C.E. Sri Krishnapur Math- Shivalli-Udipi taluk- S.Kanara Dt-C.C.No. 202 of 1950- Addl: First class Magistrate's Court- Mangalore- petition of Sri K. Subraya Mithal to the Government- Remarks- called for- submitted.

Ref:- Your Endt No. 7268/52-1 Adm dated. 16.2. '52.

.....

The following facts are borne out by the records.

The math under reference is a rich institution having an annual income of over Rs. 50,000/-. From the annexure to B.O.No. 4060 dated. 20.11.1946 it is seen that scheme proceedings were started suo motu by the H.R.E.Board in 1945, when from the several audit reports and other reports that came from its local officers it was found that the administration of the properties and endowments attached to the math by the Swamiar was far from satisfactory. A scheme was finally settled in Board's Order No. 4060 dated. 20.11.46. Under the provisions of the scheme an Executive Officer was appointed to be in charge of the day-to-day administration of the math and to discharge the functions enumerated therein. Against this order of the Board the Mattadhipathi filed O.S. 1/47 in the District Court, S. Kanara. That suit was dismissed, but certain provisions in the Board's scheme were modified. The Mattadhipathi filed an Interlocutory Application (No.157 of 1949) for a proper interpretation of the powers of the E.O. in regard to which the E.O. and the Mattadhipathi were in dispute. This was also dismissed by the Dt.Court. Now the scheme settled by the Dt.Court is the subject matter of an appeal in the High Court.

The allegations in the petition that the enemies of the Mattadhipathi conveyed false information to the H.R.E. Board, that he had secreted or otherwise disposed of some valuable moveable properties of the math and that the Board without even enquiring into this allegation ordered a prosecution

I.T.O.

to be launched against the (2) attadhipati are baseless. What happened was that on certain reports received from the Local Officer, the Board by its memorandum No. 82742/46-4 Adm dated. 30.11.48 directed the Executive Officer of the temple to place those reports and other evidence with regard to the jewels alleged to have been suppressed and misappropriated by the Swamiar before a competent lawyer and obtain his legal opinion as to how far a case of misappropriation can be made out against the Swamiar. On the report of the E.O. dated. 28.3.49, the D.S.P. was, in Board's letter No. 7127/49-2 dated. 30.5.49 appraised of the reports received by the Board and he was requested to investigate into the complaints made by the Executive Officer The Dy. S.P. apparently after investigation sent his reply to the Board's communication above referred to, that he had registered a case under Section 406 I.P.C. against the Swamiar of the Math (in Udipi station Cr.No. 103/49) and that the case was under investigation. The case was registered by the police as C.C.No. 202/50 and it is still pending.

As regards the statement in the petition that to pursue the criminal proceedings will be vexatious and unjust and that it will only offend the religious sentiments of the disciples of the math and the petitioner, this Department cannot offer any remarks as the matter is sub judice. It may, however, be pointed out that the case was registered in 1949 and was numbered as C.C.No.202/50, that it is stated that all that remains is the pronouncement of judgment which has been reserved and that in the meanwhile the Swamiar's whereabouts are not known and a warrant has been issued for his arrest. These may be verified from the Magistrate. It appears too late a stage now to urge that the religious susceptibilities of the disciples would be offended and it is for consideration whether this is not urged possibly to avoid judgment.

The attack in the petition as regards the appointment of the Executive Officer appears pointless in view of the

fact that the Mattadhipathi himself questioned this order in the District Court in I.A.44 of 1947 in O.S.I of 1947 and this was dismi-sed and an appeal to the High Court in A.S.No.216/47 was also dismissed on 29-10-1947.

The concerned files relating to the matter are forwarded herewith and they may be returned when no longer required.

Deputy Commissioner.

R.R.18-2-52.
Encls.

1. Govt.Memo No.19933 Pr.III/52-2 dated 13-2-52 with Encl.
2. File in C.No.7127/49.
3. Stitched file in B.O.No.17 dated 3-1-50.
4. Copy of District Court Scheme in O.S.1/47.
5. File in R.I.A.No.157/49 in O.S.1/47.
6. File in B.O.No.2639 dated 16-7-48.

} not in file

39124

17

Office of the Commissioner for Hindu Religious and Charitable Endowments, Madras.

Letter G.O. 7803/52-2-Addl., dated 4th March 1952.

From

Sri T.M. Chinnaiya Pillai, M.A., B.L.,
Commissioner,
Hindu Religious and Charitable Endowments,
(Adm.)Department, Madras.

To

The Secretary to the Government of Madras,
Home Department,
Fort Saint George, Madras.

Sir,

Sub: Criminal justice - C.C.No. 202 of 1950 on the file of the Addl.First Class Magistrate - Mangalore, South Kanara district - Request for stay of proceedings and withdrawal of prosecution - Reports.

Ref: Government, Home Department, Memorandum No.10033 Pr.III/52-2-dated 13-2-1952.

From the District Magistrate, South Kanara, Letter C.No. 1007/51 MIC dated 28-2-1952.

The report of the District Magistrate, South Kanara, is herewith forwarded, along with a report of the Deputy Commissioner, Hindu Religious and Charitable Endowments, Coimbatore, who is having jurisdiction over Sri Krishnapur Math, Udipi. I fully agree with the views expressed by both the District Magistrate, South Kanara and the Deputy Commissioner, Hindu Religious and Charitable Endowments, Coimbatore and submit that there are no grounds for the withdrawal of prosecution in C.C.No. 202 of 1950 on the file of the Additional First Class Magistrate, Mangalore, especially when it is seen that all that remains to be done in the case is the pronouncement of the judgment and that religious susceptibilities of disciples are seen to be urged to avoid a judgment.

Yours faithfully,

Commissioner.

R.G.4.3.

Encl: 1. Report of the District Magistrate, Mangalore, C.No.1007/51 MIC dated 28-2-1952.

2. Report of the Dy.Commissioner, H.R. C.E., Coimbatore, Letter No.2151/52-1-Addl-dated 18-3-1952.

PP 19-21 mgm

23

Ref: C.No.1087/51 MHC. South Kanara District Magistrate's Office, Mangalore Dated. 22.2.1952.

From
Sri A. R. Rajaratnam, B.A.,
District Magistrate,
South Kanara, MANGALORE.

To
The Secretary to Government,
Home Department, Fort St. George, MADRAS.

Through
The Commissioner Hindu Religi and Charitable Endowment ((Administration) Department MADRAS.

Same as M 13 — 15 ante

Sir,

CRIMINAL JUSTICE.: C.C.No.202/50 on the file of Additional I Class Magistrate, South Kanara --Withdrawal of prosecution--- Remarks

Ref: Government Memo No.19933/Pr.III-52.2 Home Department dated 13.2.1952 ---

p 9 ante

In the Government Memo cited above I have been asked to offer my remarks on the petition dated 31.1.1952 from Sri K. Subraya Aithal, Gen. Agent Sirur Mutt in which he has requested the withdrawal of C.C.No.202/50 on the file of A.F.C.M. South Kanara pending against Sri Vidya Ratna Teertha Swamiyar of Krishnapur Mutt, Udipi. The circumstances under which the prosecution was launched are as follows:

Sri Vidya Ratna Teertha Swamiyar accused in C.C.202/50 is the trustee of Krishnapur Mutt Udipi one of the renowned eight Mutts at Udipi. He was a minor when he was installed in office in the year 1935. He attained majority in 1938 and towards the end of 1939 or at the beginning of 1940 took over the managements of the affairs of the Math directly himself. Though the Math came under the control of the H.R.E.Board prior to 1935 there was apparently no regular audit of the Maths accounts at any time before 1941. In September 1941 the accounts relating to two years, roughly corresponding to 1938-39 were audited and the report of the auditor disclosed certain defects in the management of the Maths affairs. It is also reported that it disclosed that the Math which owned considerable properties had huge debts and that a proper register of valuable jewels belonging to the Math which had to be maintained under Sec.38 of the Act was not maintained, or at any rate the Swamier was not prepared to dislocse it in spite of notices issued to him. In November 1946 a scheme for the management of the Maths affairs was framed by the Board. The accused filed a suits O.S.1/47 on the file of the District Judge South Kanara against it. It was dismissed with a few amendments to the scheme settled by the Board. In 1943 a list of gold and silver jewels, vessels and other moveables owned by the Math was filed on behalf of the Math before the Board by the Manager of the Math. As it was not in order the Swamier was asked to prepare a fresh register in accordance with the rules. The Swamier did not however produce section 38 register at the time of the verification by the H.R.E.Inspector, Udipi. The Assistant Commissioner on 5.9.45 issued a communication to the Swamier calling for an exhaustive list maintained under Sec. 38, verified and signed by the Trustee. On 1.8.46 the Commissioner H.R.E.Board visited the Krishnapur Math and on that occasion asked the Swamier to produce the jewels register of the Math which had been produced before the auditor at the time of the audit for fasli 1350. It is said that the Swamier did not have the register and that on the same day he had a list signed by the then Manager filed before the Commissioner. That list was thereupon sent to the Assistant Commissioner for verfication after comparing withe the propeties and the register of jewels already inspected by the auditor during the course of the audit for fasli 1350. The H.R.E. Inspector reported that the entries in the list were correct but that the jewels could not be weighed as the Swamier did not afford facilities to do it. In the meanwhile a petition was received by the Board alleging that

p.t.o.

24

that the Math which was formerly one of the richest Maths in Udipi with a large income and plenty of gold properties was being mis-managed by the Swamier, that he was not observing the 'Yathi Deeksha' properly and was leading a life of pleasure. It also alleged that he had sold most of the valuables of the Math, worth more than 3 lakhs of Rupees, that he had shown false debts and that he had purchased properties and bungalows in the name of his relatives from the funds he had wrongfully amassed from the math and requesting that suitable action may be taken in the matter. As there appeared to be truth in the allegations made, the Secretary H.R.E. Board addressed the District Superintendent of Police, South Kanara on 30.5.49 requesting him to investigate into it, and enclosed a copy of the petition and the statements recorded during the enquiry. He also reported that some of the jewels and valuables belonging to the Math were reported to have been either suppressed or misappropriated by the Mathadhipathy. The police conducted a thourough enquiry and laid the charge sheet on 6.4.1950 for an offence punishable under section 409 I.P.C. The charge against the accused is that he, being the trustee (agent) of Kalimardhana Krishna Devaru of Krishnapur Mutt and in such capacity on or about May 1939 at Udipi being entrusted with certain propeties, to wit gold ornaments of the deity worth in all one lakh of Rupees, committed criminal breach of trust with respect of the said properties between 1939-46. The charge sheet in this case was filed on 6.4.1950 and the trial concluded on 24.11.1951. Twenty one witnesses were examined for the prosecution and fifteen for the defence.

A large number of exhibits were marked in this case on behalf of both sides. As the case also involved several points of law, arguments were heard by the Additional I Class Magistrate on 1.12.1951, 5.12.1951, 6.12.1951 and 19.12.1951 and after hearing fully either side the case was posted to 24.12.1951 for judgment. During the trial the Swamier was allowed to be represented by a pleader who was directed to produce the accused on 24.12.1951 for judgment. When the case was called up for pronouncement of judgment, a medical certificate was produced on behalf of the accused. The case was therefore adjourned to 29-12-1951 for pronouncement of judgment. On 29.12.1951 again the accused did not turn up on grounds of ill health. The A.F.C.M. therefore issued a N.B.W. for the arrest of the accused. This N.B.W. has not yet been executed. On 8.2.1952 the A.F.C.M. issued another N.B-W. to the Inspector of Police in whose jurisdiction the accused was originally residing. On 13.2.1952 the delay in the execution of these N.B Ws was brought to the notice of the District Superintendent of Police with a request to arrange its early execution. On 8.2.1952 a petition was presented on behalf of the accused through the lawyer raising practically the same points raised in the petition dated 31,1.1952 of Sri K. Subraya Aithal and requesting the court to reopen the case for defence. As the points raised were already discussed once in detail, the A.F.C.M. rejected the petition. The present petitioner Sri K. Subraya Aithal appears to be a general agent of the Shiroor Math. I have to mention here that the Swamier of the said Math was one of the witnesses examined on behalf of the defence in the case.

The petitioner had claimed immunity on behalf of the accused from prosecution in a court of law for criminal breach of trust and has cited in support of this I.L.R,44 M.831 (Vidya Varudhi Thirtha Swamigal V. Balasu Swami Ayyar and another,) CMP No.2591/51 dated 13.12.1951 of the Madras High Court and section 78 of the Madras Act II 1927 (Madras Hindu Religious Endowments Act). The C.M.P. quoted above has not been reported in the law reports. In the case reported in I.L.R.44 M.831 the

the Privy Council has held that Endowments of a Hindu Mutt are not conveyed in trust nor is the head of the Mutt a trustee with regard to them save as to any specific property proved to be vested in the head for a specific and definite object. This decision was given with reference to the applicability of article 134 of schedule I of the Indian Limitation Act 1908 in connection with the grant of a permanent lease over a part of a Mutt property not proved to be subject to a specific trust. I do not think this decision is helpful to the accused in this case. At any rate this factor has been placed before the trying Magistrate on behalf of the accused. The procedure prescribed in section 78 of Madras Act II has to be followed only in a case where a person appointed as a trustee of a math or has been appointed to discharge the functions of a trustee and such person is resisted in obtaining possession of the math, records, accounts and properties etc. This section is not applicable in a case of criminal breach of trust by a Trustee.

5 It cannot be disputed that the Swamier is an agent of the deity to whom the jewels belong. The deity being the proprietor of the jewels, the Swamier whether he is a trustee or not within the meaning of the term in the statute relating to the trustees is clearly an agent of the proprietor. In view of these facts the contention raised in para 5 of the petition has no force. In a proved case under section 409 IPC imprisonment is imperative and hence the anxiety of the accused and his friends to get the case withdrawn. There was no reason why the accused should not have moved for the withdrawal of the prosecution in the intial stages instead of causing a petition to be submitted to Government by a third person when the case is ripe for disposal. The representation of the petitioner that the conviction of the accused will offend the religious sentiment of the innumerable disiples of the Mutt is not correct. On the other hand it will have a deterrent effect upon the trustees of other Mutts in this District. The accused is a notorious person with a very bad reputation in these parts. The progress of this case is being watched with keen interest by the public. The trial of the accuse is long over and he is evading appearing before the court to receive the sentence. A withdrawal of the case at this stage will be interpreted by the public as an unwarranted interference by the executive to save the accused from the cluthhes of law. I do not recommend withdrawal of the case.

5

COMMISSIONER OF HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
9011
27 FEB 1952
MADRAS

Yours faithfully,

District Magistrate.

Copy to the Secretary to Government, Home Department MADRAS, direct.

Special

Home dept

Endt. No. 19933 Pr III/52-4 Dated 26.2.52

Mis-sent. forwarded to the Commissioner Hindu Religious and charitable Endowments (Administration) department, Madras three on this was intended to be submitted to Govt.

To the Commissioner Hindu Religious and Charitable Endowment (Admn) dept. Madras

for Under Secretary to Govt 26/2/52

Ref.C.No.1087-52.MHC

S.Kanara Dt.Magistrate's office
Mangalore dated 4.3.52.

From

SRI A.R.RAJARATNAM,B.A.
Dt.Magistrate of South Kanara.

To

The Secretary to Government
Home Department
Fort St. George Madras 9.

Sir,

CRIMINAL JUSTICE: C.C.No.202/50 on the file of the Additional I class Magistrate South Kanara--withdrawal of prosecution--further report.

--

Ref: 1.Government Memo No.19933 Pr.III/52-2 Home dated 13.2.52.
2.My report C.No.1087/52 MHC dated 22.2.52.

--

I invite the attention of Government para 3 of my report cited above. The accused Sri Vidya Ratna Theertha Swamiyar appears to have filed a revision petition in the High court under section 435 and 439 Cr.P.C to revise the order dated 8.2.52 of the Additional I class Magistrate South Kanara in C.C.No.202/50 refusing to re-open the case for the defence. This petition was dismissed by the High court. I enclose a copy of the order of the High court in Cr. Revision Case No.165 of 1952 dated 18.2.52 for information.

Yours faithfully,

For Dt.Magistrate.

Encl: 1.
HJ-IC/6.3.52.

29

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Monday, the eighteenth day of February.

One thousand nine hundred and fifty two.

Present:

The Honourable Mr. Justice Ramaswami.

Criminal Revision Case No.165 of 1952

Criminal Revision petition No.151 of 1952

Sri Vidya Ratna Thertha Swamiyar ..... Petitioner (Accused)

Petition under sections 435 and 439 of the Code of Criminal Procedure, 1898 praying the High Court to revise the order of the court of the Additional First Class Magistrate, South Kanara (General) dated 8.2.52 in C.C.No.202 of 1950.

This case coming on for orders as to admission, upon perusing the petition and the order of the lower court, and upon hearing the arguments of Mr.K.Rajah Iyer, for Mr.K.Srinivas Rao, and Mr.T.Krishna Rao, advocates for the petitioner, the court made the following:

O R D E R

There are no grounds to interfere. The petition is dismissed.

/True copy/

mn.6.3.

Congrl

31

Home (Pr.III) Department

Memo. No. 19933 Pr III/52-5 dated 24.3.52

Criminal Justice - C.C.No.202 of 1950 on the file of the Additional First Class Magistrate, Mangalore, South Kanara district - Stay of proceedings and withdrawal of Prosecution.

Ref: (1) From Sri K.Subraya Aithal, General Agent, Sirur Mutt, Udipi(South Kanara)Dt., dated 31-1-52.

(2) From the D.M., South Kanara C.No.1087/52 M HC dated 22-2-52

(3) From the Commr. Hindu Religious and Charitable Endowments (Admn.) Dept. No. 7268/52-3, Admn., dated 4-3-52.

--

The Govt. observe that the prosecution against Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt Udipi has proceeded on the basis that the H.R.E. Board had powers to interfere with the properties, movable and immovable of the Mutt and of the trustee. In CMP.No.259/51/(Shirur Mutt Case) which came up before the Madras High Court recently the Hon'ble Judges have held, among other things that, section 58 (3) of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Act No. XIX of 1951) is ultra vires. It therefore appears that the action of the H.R.E.Board in having taken steps to launch a prosecution on the basis of the powers conferred on them by the Scheme and on the report of the Executive Officer appointed by them may not be quite in order. The Collr.of South Kanara is requested to offer his remarks in consultation with the D.S.P. and local P.P. on the above point. The Collector's report should be submitted to Govt. through the Commr., H.R. & C.E.(Admn.), so as to reach Govt.not later than 10-4-52.

2. In view of the uncertain state of the matter at present with regard to its core law, the Govt. have decided that it may be left to the accused to move the Court of the A.F.C.M. Mangalore for a long adjournment of the case and in the event of refusal of the same, to move, if so advised, the High Court also in the matter. The Collr.of South Kanara is requested to instruct the prosecuting counsel not to oppose the grant

grant of a long adjournment, when moved by the accused.

DPO Pdy 25/3/52

To the Collr. of S.Kanara
Commr. H.R. and C.E
(Admn) Deptt, Madras.

24.3.52

24.3.52

Urgent

SECRETARY TO GOVERNMENT
27 MAR 1952
HOME DEPARTMENT

33

URGENT

From

The Deciples of Sri Krishnapur Mutt.,
U D I P I.

To

The Honourable Minister for Law,
Government of Madras,
M A D R A S.

Sir,

We learn that His Holiness Vidyaratna Thirtha Swamiar, who is the Matathipathi of Sri Krishnapur Mutt., Udipi, is being prosecuted in C.C.No.202 of 1950 on the file of the Additional First Class Magistrate, South Kanara for criminal breach of trust with regard to some of the Mutt Jewels, and that a non-bailable warrant of arrest has been issued to him for appearance in Court with a view to deliver judgment. We the deciples apprehend that insistence on his presence on the day of judgment is intended for the purpose of convicting him and the deciples feel that such a course will tend to cause disgrace to the spiritual Guru in the eyes of the World.

2/ The prosecution has been initiated by the Secretary to the Hindu Religious Endowment Board. It is contrary to the elementary principles of law that a Matathipathi should commit criminal breach of trust in respect of properties of which he is not a trustee. Recently, the High Court had occasion to consider, in a Writ petition preferred by the Shirur Matathipathi, the nature of the rights of the Head of the Mutt in the properties of the Mutt, and it has been held there that the Matathipathi is not a trustee in the general sense of the term.

Contd

35

2

3 It is further understood that after the Constitution came into force, no scheme framed by the Hindu Religious Endowment Board could have any legal validity and that the new Hindu Religious and Charitable Endowments Act, which came into force in 1951, is equally void and unenforceable. We understand that the Swamiar of the Sri Krishnapuru Mutt has taken out a writ for a Mandamus to restrain the scheme being enforced against his Mutt and that an order of injunction has been passed by the High Court on 24-3-1952 restraining such enforcement.

4 We beg to submit that a prosecution based on non-delivery of the jewels to the Executive Officer cannot amount to criminal breach of trust and that the action of the Government in persisting on a prosecution against the spiritual Head of the thousands of respectable and pious Shivalli Brahmins in South Kanara will tend to inflame their religious feelings. A prosecution cannot be construed as other than an intention to disgrace a spiritual Head by arresting him and subjecting him to humiliation.

Cont

-Rc-

5 We further understand that the prosecution is unsustainable in law and that the alleged acts of the Matathipathi, even if true, cannot amount to an offence. We therefore pray that the Hon'ble Minister may be pleased to direct that the prosecution may be withdrawn immediately and that the non-bailable warrant of arrest be directed to be countermanded.

of 'M' on p 122 (E)

M

26-3-52.
Madras.

We beg to remain,

Yours faithfully,

1. U Rama Rao. M.L.C. Madras.
2. K Seetha Rama Rao. Proprietor, Madras Cafe Madras.
3. K. Krishna Rao. Proprietor, Woodlands Hotel Madras
4. M Narayana Rao. Physician & Surgeon Madras
5. P. Srinivasa Rao. Veterinary Surgeon. Editor, The Indian Veterinary Journal Madras.
6. A Ramadas Medical Radiologist. Madras
7. K. Srinivas Rau M.B. Elder. Poonamallee High Road
8. B Venna, Agent, The Karnataka Bank Ltd
9. M Krishna Rao. M.B.B.S. 91. China Bazaar Road. Madras
10. M Rao M.B.B.S 32 Kutty Naika Mudali St
11. S.V. Rao, Mg. Director, Premier Bank of India Ltd, Madras.
12. A S Bhat Labour Officer B & C Mills.

39

To

The Secretary,
Government of Madras.

Humble petition of K.Rama Rao, son of Sri.K.Narayanappayya, Suratkal, Mangalore Taluq, South Kanara.

Dated: 31st March, 1952.

Respectfully Showeth,

1. The Petitioner is a ~~desiple~~ disciple of Sri.Krishnapur Mutt, Udipi.

2. That a Memorial was presented to the Government on 31st January 1952 by Sri.K.Subraya Aithal, Udipi praying that the Government would be pleased to withdraw the prosecution against Sri.Vidyaratna Thirtha Swamiyar of Sri. Krishnapur Mutt, Udipi, in C.C.No.202 of 1950 in the Court of the First Additional First Class Magistrate, South Kanara and that memorial is pending final orders.

3. In the meanwhile the Magistrate threatens to proceed$ to judgement in the case inspite of the repeated representations made to him on behalf of the Matadhipathi to stay his hands till the disposal of the Memorial before the Government and it is apprehended by the innumerable desiples of the Mutt that inspite of unsustainability of the charges he will convict the Matadhipathi and send him to jail for ones and it need hardly be stated that the magnitude of the disgrace it will involve to him, the desiples of the Mutt and the Madhwa Public in general and the any amount of the vindication of the character of the Matadhipathi afterwards will not undo the mischief.

4. Apart from the falsity of the charges levelled against the Matadhipathi it was pressed before the trail Magistrate that the accused cannot be ~~xx~~ tried in one trail on charges of Criminal misappropriation in respect of many items

on movable properties alleged to have committed during a period of six years and that therefore the proceedings ought to be quashed but this was not heaued. It was again represented to him that the Matadhipathi could not be charged for an offance under Section 409 I.P.C. in respect of movable properties of the mutt, this position was fully considered and decided by the High Court of Judicature at Madras. in C.M.P.No.2591 of 1951 a petition filed by the another Matadhipathi of Udipi Mutt that the judgement was delivered on the 13th December 1951, its copy was not yet received and that a little time be granted to produce it. But this was refused. A request was made on 28th March 1952 to adjourn the proceedings for one month on grounds that the early orders was expected on the Memorial made to the Government but this again was turned down. From all these circumstances the innumerable desiples of the Mutt entertained serious misgivings about the result of the trail of this case in that court.

5. The petitioner is therefore prays that the orders on the Original Memorial may be passed expeditiously and that pending it stay of further proceedings in the case may be ordered immediately.

43

Office of the Commissioner for
Hindu Religious and Charitable Endowments
(Adm) Department, Madras.2.

Letter No. 7268/52-4 Adm dated 5-4-1952.

From
T.M.Chinnaiya Pillai, M.A.,B.L.,
Commissioner,
Hindu Religious and Charitable Endowments, (Adm) Department,
Madras.2.

To
The Secretary to Government,of Madras,
Home Department,
Fort St.George, Madras.9

6/113/52

Sir,

Sub: Criminal justice - C-C.No. 202/50 - Additional First class Magistrate Mangalore - Sri Krishnapurmath Shivalli - Injunction granted by High court - information furnished.

Ref: 1. Government Memo No. 19933 P.a. III/52-2 d/13-2-52.
2. My letter No. 7268/52-3 Adm dated 4-3-1952.
3. High court order in writ petition No. 202/52

The High court of Judicature Madras has restrained me by its injunction order in writ petition 202/52 from enforcing the provisions of the Madras Hindu Religious and Charitable Endowments Act 1951, in the case of Sri Krishnapur Math, Udipi, South Kanara Dt.

Yours faithfully,
Commissioner.

K.S. 5/4/52.
Copy to the Secretary to Government,
Rural Welfare, department, Madras.9

C.P. 19933 Sec V

V. Urgent

for personal attention.

for collector's own

Memo. No. 19933 Prin/52-8 , 14.6.52

Criminal Justice. — C.E. No. 202 of 1950 on the file of the A.F.C.M., Mangalore — Withdrawal of prosecution —

Ref: Memo. no. 19933 Pr. III/52-5, Home, dt: 24.3.52.

pp 21-22 cf.

The Collector of South Kanara is requested to send submit (thro. the Comm., H.R. & C.E. (Admn) dept.) the report called for in the memo. cited without any further delay.

2. The attention of the Comm., H.R. & C.E. (Admn.)

dept is requested to his letter no ?-32 7268/52-4 d. 5.4.52 p 4 and he is requested to submit to Govt. very urgently a copy of the order of the High Court in writ petition no 1202/52.

MS
14.4.52.

To.
The Collector of South Kanara Mangalore (para 4 only)

To. The Commr., H.R. & C.E. (Admn.) dept., Madras 2.

14/4/52

Home Dept.

D.O.No 19933 prm/52-9 dt: 14-4-52.

Subj: Criminal Justice — Cr. No 202 of 1950 on the file of the A.F.C.M., Mangalore — Withdrawal of prosecution.

Ref: Memo. no. 19933 Pr.III 52-5 Home dt: 24.3.52

My dear Rajaratnam

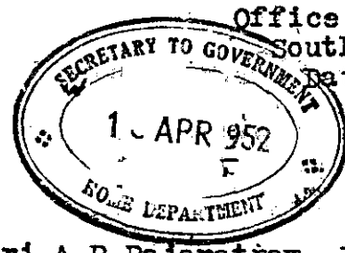
Please refer to the memo. cited and submit the report called for therein immediately.

Yours sincerely,
J.S. Bhargava

To.
Sri A.R. Rajaratnam B.A.,
Collector of South Kanara
Mangalore.

Confidential.
C No. 1087/52

Office of the Collector of South Kanara, Mangalore, Dated 14th April, 52.



From

Sri A.R.Rajaratnam, B.A.,
Collector of South Kanara,
MANGALORE.

To

The Secretary to Government
Home Department, Fort St.George,
MADRAS.

Through

The Commissioner Hindu Religious and
Charitable Endowment (Administration)
Department, Madras.

Sir,

SUB: CRIMINAL JUSTICE - C.C.No.202/50 on the file of Additional First Class Magistrate of South Kanara - Stay of proceedings and withdrawal of Prosecution

.....

REF: Government Memorandum No.19933.Pr.III/52-2 Home Department, dated 24-3-1952.

.....

I have consulted the District Superintendent of Police, South Kanara, Mangalore, and the Local Public Prosecutor on the point raised in the Government Memorandum cited. I find that a petition was received by the President Hindu Religious Endowment Board from some of the deciples of Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi, alleging misappropriation of jewels handed over to the Swamiyar by his predecessor, and that it was sent by the President to the Inspector of Endowments for report. On receipt of the report, the Board forwarded to the District Superintendent of Police, South Kanara the petition and the report for such action as he deemed necessary. He registered a case for offences under section 406 and 409 I.P.C. and after investigation charge sheeted the Swamiyar. The Asst. Public Prosecutor who is in charge of the case says that the charge sheet was laid by the Police and not by the Board and that in this case anybody could have set the law in motion as the moveables came to Sri Vidya Ratna Theertha Swamiyar from his predecessor and that they did not relate to any income derived from the Temple nor were they by the "Padakanika" which Swamiyar could spend as he pleased. The accused has gone to the High Court on two occasions and I understand that he has recently gone to the High Court for the third time for a writ requesting the High Court to quash the entire proceedings taken by the Addl.First Class Magistrate, South Kanara. It will seen from my report R.C. No.1087/52,M.H.C, dated 22-2-52, that the case was posted for Judgment on 24-12-51. As he did not appear on that day, the case was adjourned to 29-12-51. He did not appear on that day also and the Addl.First Class Magistrate issued a non-bailable warrant against him. It is reported that the accused is absconding. The District Superintendent of Police, whom I consulted, says that it is not desirable to withdraw

P.T.O

the case at this stage. He says that far from its being in the Public interest to withdraw the case, it would be serious reflection on the Administration of Justice and would raise doubts in the public mind as to the absolute equality of all before the Law if the case were to be withdrawn at this stage. The local Public Prosecutor also says that it will be against Public policy to withdraw the case now and that as the accused has gone again to the High Court for a writ to quash the proceedings in view of the Judgment in C.M.P.No.2591/51 (Shirur Mutt case), it may be left to the accused to fight out the case in the High Court. The Local Public Prosecutor thinks that the Judgment in C.M.P.No.2591/51 will not apply to the facts of this case and that the case need not be withdrawn on the ground that the decesion in C.M.P.No. 2591/51 went against the prosecution. I agree with District Superintendent of Police and Local Public Prosecutor in considering that it is not desirable to withdraw the case against Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi at this stage.

Yours faithfully,

COLLECTOR, S.K

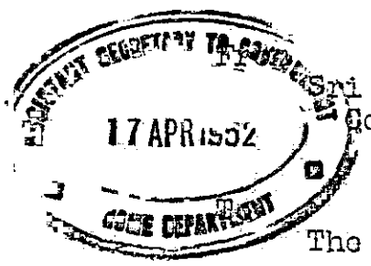
Copy to the Secretary Home Department, Fort St.George, Madras, direct.

51

Confidential.

Office of the Commissioner for Hindu Religious and Charitable Endowments, Madras-2.

Letter No.14359/52-1 Adm Dated 16-4-1952.



Sri T.M. Chinnaiya Pillai, M.A.,B.L.,
Commissioner, Hindu Religious and
Charitable Endowments, Madras-2.

The Secretary to Government of Madras,
Home Department, Fort St. George, Madras.

Sir,

Sub: Criminal Justice - C.C.No.207 of 1950 on the file of the Additional First Class Magistrate, Mangalore South Kanara District - Stay of Proceedings and withdrawal of Prosecution.

Ref: Government Memorandum No.19933 Pr.III/52-1 dated 24-3-1952.

In forwarding herewith the letter of the Collector of South Kanara, I am to state that the judgment of the High Court in C.L.P.No.2591/1951 will not apply to the facts of the criminal case now in question and that I support the view of the Collector that there are no grounds for withdrawing the Prosecution and that it is not desirable in the public interest to do so.

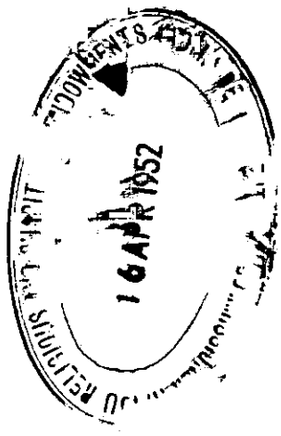
I understand that an application was recently made to the High Court on behalf of the accused Sriniyar to quash the Proceedings before the Magistrate but was rejected without being admitted.

PB.16-4-1952.

Enclosure: 1 in original.

Yours faithfully,

COMMISSIONER.



Confidential.
C.No. 1087/52

Office of the Collector of
South Kanara, Mangalore,
Dated 14th April, 52.

53

From 16234

Sri A.R.Rajaratnam, B.A.,
Collector of South Kanara,
MANGALORE.

To

The Secretary to Government
Home Department, Fort St.George,
MADRAS.

Through

The Commissioner Hindu Religious and
Charitable Endowment (Administration)
Department, Madras.

Sir,

SUB: CRIMINAL JUSTICE - C.C.No.202/50 on the file of Additional First Class Magistrate of South Kanara - Stay of proceedings and withdrawal of Prosecution

.....

REF: Government Memorandum No.19933.Pr.III/52-2 Home Department, dated 24-3--1952.

.....

I have consulted the District Superintendent of Police, South Kanara, Mangalore, and the Local Public Prosecutor on the point raised in the Government Memorandum cited. I find that a petition was received by the President Hindu Religious Endowment Board from some of the deciples of Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi, alleging misappropriation of jewels handed over to the Swamiyar by his predecessor, and that it was sent by the President to the Inspector of Endowments for report. On receipt of the report, the Board forwarded to the District Superintendent of Police, South Kanara the petition and the report for such action as he deemed necessary. He registered a case for offences under section 406 and 409 I.P.C. and after investigation charge sheeted the Swamiyar. The Asst. Public Prosecutor who is in charge of the case says that the charge sheet was laid by the Police and not by the Board and that in this case anybody could have set the law in motion as the moveables came to Sri Vidya Ratna Theertha Swamiyar from his predecessor and that they did not relate to any income derived from the Temple nor were they the "Padakanika" which Swamiyar could spend as he pleased. The accused has gone to the High Court on two occasions and I understand that he has recently gone to the High Court for the third time for a writ, requesting the High Court to quash the entire proceedings taken by the Addl.First Class Magistrate, South Kanara. It will seen from my report R.C. No.1087/52,M.H.C, dated 22-2-52, that the case was posted for Judgment on 24-12-51. As he did not appear on that day, the case was adjourned to 29-12-51. He did not appear on that day also and the Addl.First Class Magistrate issued a non-bailable warrant against him. It is reported that the accused is absconding. The District Superintendent of Police, whom I consulted, says that it is not desirable to withdraw

P.T.O

54

the case at this stage. He says that far from its being in the Public interest to withdraw the case, it would be serious reflection on the Administration of Justice and would raise doubts in the public mind as to the absolute equality of all before the Law if the case were to be withdrawn at this stage. The local Public Prosecutor also says that it will be against Public policy to withdraw the case now and that as the accused has gone again to the High Court for a writ to quash the proceedings in view of the Judgment in C.M.P.No.2591/51 (Shirur Mutt case), it may be left to the accused to fight out the case in the High Court. The local Public Prosecutor thinks that the Judgment in C.M.P.No.2591/51 will not apply to the facts of this case and that the case need not be withdrawn on the ground that the decesion in C.M.P.No. 2591/51 went against the prosecution. I agree with District Superintendent of Police and Local Public Prosecutor in considering that it is not desirable to withdraw the case against Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi at this stage.

(E) X (E)

1A

1S

Yours faithfully,

14.4.52

COLLECTOR, S.K

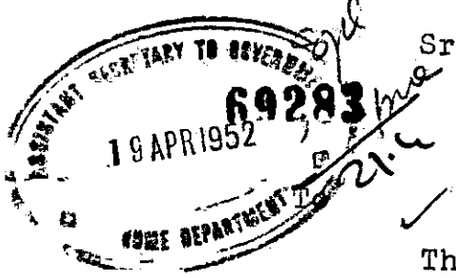
Copy to the Secretary Home Department, Fort St.George, Madras, direct.

55/

Office of the Commissioner for Hindu Religious and Charitable Endowments, Madras.

Letter No. 7268/52-5-Adm-dated 17th April 1952.

From



Sri T.M. Chinnaiya Pillai, M.A., B.L.,
Commissioner for Hindu Religious and
Charitable Endowments(Adm) Department,
M a d r a s.

The Secretary to the Government of Madras,
Home Department,
Fort Saint George, Madras.

Sir,

Sub: Criminal justices - C.C.No. 2820 of 2020 on the file of the Additional First Class Magistrate - Mangalore - Withdrawal of prosecution - Copy of the order of the High Court in C.M.P. 3126/52 in writ petition 202/52- - Furnished.

Ref: Government Memorandum No. 19933 Pr.I.III/52-8-dated 14-4-1952.

In forwarding herewith a copy of the order of the High Court in C.M.P. No. 3126/1952 in writ petition No. 202/1952, High Court, Madras, I am to state that in the C.M.P. only the Commissioner and the executive officer are parties. But, in the writ petition the State Government, the Commissioner and the Executive Officer are respectively respondents 1 to 3.

Encl: one.

Yours faithfully,

Commissioner.

m.g.17.4.

Copy to the Secretary to the Government of Madras,
Rural Welfare Department,
Fort Saint George, Madras.

Encl: one.

57

Inthe High Court of Judicature at Madras.

Civil Miscellaneous Petition No.3126 of 1952.

1. H.H. Srimad Vidyaratha Theertha Swamiar of Krishnapur Mutt in Shivalli village, S. Kanara. Petitioner.

Vs.

The Commissioner, H.R.E. Board, Nungambakkam, Madras.
A. Krishnamurthirao. Respondents.

To
The Commissioner, H.R.E. Board, Nungambakkam, Madras.
2. A. Krishnamoorthy Rao, E.O. Krishnapur Math, Udipi.

Whereas upon motion made this day into this court by Mr. M.K. Nambyar and Mr. C.F. Louis, advocates for the petitioner this court hath ordered that an interim injunction do issue against the first respondent from enforcing against the petitioner and his Krishnapur Math any of the provisions of the Madras H.R.E. Board Act XIX of 1951 and restraining the 2nd respondent from doing any act as the executive officer of the mutt or collecting any rent, profit or other amounts due to the math or from operating any bank account appertaining to the Krishnapur math funds pending further orders on this petition.

You (1) the Commissioner, Hindu Religious Endowments Board Nungambakkam, Madras, and (2) Mr. A. Krishnamurthi Rao, the aforesaid first and 2nd respondents are hereby restrained either by yourself, your servants, your agents or assigns 1st respondent from enforcing against the petitioner and his Krishnapur math any of the provisions of the Madras H.R. & C.E. Board Act XIX of 1951 and the 2nd respondent from doing any act as the Executive officer of the Krishnapur math or collecting any rent profit or other amounts due to the math or from operatingon any bank account appertaining to the Krishnapur math fund pending further orders on this petition.

Given under my hand and seal of this court this 24th day of March 1952.

Sd. x x x x x x x x x x
Asst. Registrar, Appellate Side.

(Copy)

59

Ref.C.No.1087/52/MHC

South Kanara Dt.Magistrate's Office Mangalore dated 20-4-52.

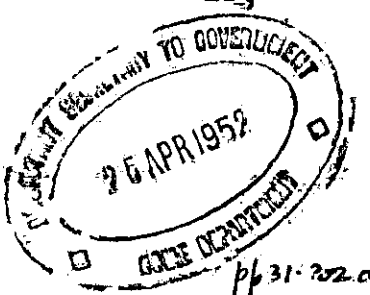
From

Sri A. R. Rajaratnam, B.A.,
Dt.Magistrate of South Kanara.

To

The Secretary to Government,
Home Department, Fort St.George,
M A D R A S - 9.

Sir,



CRIMINAL JUSTICE -- C.C.No.202/50 on the file of the Additional I Class Magistrate South Kanara withdrawal of prosecution.

---:o:---

Ref:- 1. Government Memo.No.19933/Pr/III/52-5 Home dated 24-3-52 and
2. My letter Ref.C.No.1087/52/MHC dated 14-4-52

---:o:---

In continuation of my letter cited above I have to report that the High Court has withdrawn C.C.No.202/50 from the file of the Additional First Class Magistrate South Kanara to that of the High Court to be heard along with W.P.No.202/52 on the file of the High Court. A copy of the orders of High Court in C.M.P.Nos.547 and 548/52 dated 15.4.52 is enclosed.

Yours faithfully

for District Magistrate.

Encl: 1
SR/21-4

61

IN THE HIGH COURT OF JUDICATURE AT MADRAS
TUESDAY, the Fifteenth day of April
One thousand nine hundred and fifty two

Present:-
The Honourable Mr.Justice Ramaswami.

--

Criminal Miscellaneous Petitions Nos.547 and 548 of 1952.

H.H.Srimad Sri Vidyarathna Theertha Swamiyar of Sri Khrishnapur Mutt)Petitioner in both (Accused)

Crl.M.P.No.547 of 1952:-

Pet-ition praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to withdraw C.C.No.202 of 1950 from the file of the court of the Additional First Class Magistrate, South Kanara, to the file of the High Court and dispose of it according to law.

Crl.M.P.No.548 of 1952:-

Petition praying that in the circumstances stated in the affidavit filed with Crl. M.P.No.547 of 1952, the High Court will be pleased to issue an order directing stay of all proceedings in C.C.No.202 of 1950 on the file of the Additional First Class Magistrate of South Kanara (Mangalore), pending Criminal Miscellaneous Petition No.547 of 1952 presented to the High Court to withdraw the said C.C.No.202 of 1950 on the file of the Additional Ist Class Magistrate, South Kanara, Mangalore to the High Court.

ORDER:-

These petitions coming on for orders, upon perusing the petition and the affidavit filed in support of Crl.M.P.No.547 of 1952, upon hearing the arguments of Messrs M.K.Nambiyar and C.F. Louis, Advocates for the petitioner, IT IS ORDERED that C.C.No.202 of 1950 on the file of the Court of the Additional First Class Magistrate of South Kanara, Mangalore, be and hereby is withdrawn to the file of the High Court to be heard along wit W.P.No.202 of 1952 on the file of the High Court; and IT IS FURTHER ORDERED that all proceedings in C.C.No.202 of 1950 on th file of the Court of the Additional I Class Magistrate, South Kanara, Mangalore be staved, pending further orders herein.

/True copy/

for Dt. Magistrate

Ref.C.No. 1087-52 M. C.

S.T.Dt. Magistrate's Office,
Mangalore dated 23.4.52

63

From

Sri A. P. Rajaratnam B.A.,
District Magistrate, South Canara.

To

The Secretary to Government
Home Department, Fort St.
George, Madras 9.

Sir,

CRIMINAL JUSTICE CC.No.202/50 on the file of the Additional Sessions Magistrate South Kanara - withdrawal of prosecution.

REF: 1. Government Memo.No.19933 Pr. III-52-5 Home dated 24.3.52
2. Correspondence ending with my letter Ref.C.No. 1087/52 M. C. dated 18.4.52

In continuation of my letter cited above I enclose a copy of the orders of the High Court in C.M.P.No.547 /52 dated 17.4.52 for favour of information.

Yours faithfully,

For ~~Collector~~ District Magistrate

73888

mn.21.4.

64

In the High Court of Judicature at Madras.
Thursday the Seventeenth day of April
One thousand nine hundred and fifty two.

Present:- The Honourable Mr. Justice Satyanarayana Rao
and

The Honourable Mr. Justice Rajagopalan.

C.C.No.202 of 1950 on the file of the Court of the Additional First Class Magistrate of South Kanara with-drawn to the file of High Court by order in

Criminal Miscellaneous petition Nos.547 of 1952 on the file of the High Court.

Srimad Vidyarathna Theertha Swamiar of Krishnapur Mutt in Sivalli Village, South Kanara. — ACCUSED

This case coming on for orders this da and upon hearing the arguments of Mr. M.K. Nambiar and Mr. C. Louis Advocates for the petitioner. The court made the following order:

In Crl. M. P. No. 548 of 1952 stay of proceedings in C.C.No. 202 of 1950 on the file of the Court of the Additional First Class Magistrate South Kanara was ordered. In Cr. M. P. No.547 of 1952 for trial before this Court. So no further question of the Additonal First Class Magistrate continuing the trial of that case would arise. The Additional First Class Magistrate is directed to withdraw the non-bailable warrant he has issued for apprehension of the Accused in the C.C No. 202 of 1950 on his file before him the petitioner here, the Swamiar.

The Criminal case will be posted along with other pending applications after the reopening of the Court after summer recess of 1952.

* this court has already directed the withdrawal of C.C.No. 202/52

(True copy)

For Assistant Registrar

Ref. C. No. 5372/52 M.H.C.

S.K.Dt. Magistrate's Office,
Mangalore dated 28.7.52.

From

Sri A. R. Rajaratnam, I.A.S.,
District Magistrate of South Kanara.

To

The Public Prosecutor,
Madras.

SUB: CRIMINAL JUSTICE - Krishnapur Mutt Case - CC. No. 202/50 on the file of the Additional First Class Magistrate Mangalore - Now pending in the High Court - Instructions.

****

REF: Your letter No. 3124/52 dated 25.7.52.

****

I enclose a copy of the report of the Additional First Class Magistrate South Kanara in which he has given the facts of the case. I have sent two reports to Government on references made to me confidentially and both the reports are with the Government. You may obtain them from the Government by addressing the Joint Secretary, Home Department if necessary.

2. The A.P.P.I Mangalore was in charge of the case during the trial in the court of the Additional First Class Magistrate, South Kanara. If the services of the A.P.P. are required by you, please reply by telegram so that I may depute him to proceed to Madras and give instructions to you before 4.8.52.

Yours faithfully,

For Dt. Magistrate.

Copy to the Joint Secretary to Government Home Department, Madras.

2. I have sent two reports one in my C.No. 1087/52 M.H.C. dated 22.2.52 in reply to Government Memo.No.19933 Pr.III/52-2 Home dated 13.2.52 and the second in my C.No. 1087/52 M.H.C. dated 14.4.52 in reply to Government Memo. No.19933 Pr. III/52-5 Home dated 24.3.52. Copies of these reports may be made available to the Public Prosecutor Madras if there is no objection to do so.

mn. 29.8.

Home Dept

IMMEDIATE.

66

JUDICIAL DEPARTMENT.

From

Sri V.T. Rangaswami Ayyangar,
B.A.B.L.,
Public Prosecutor,
Madras.

To

The Joint Secretary to Government
Home Department,
Madras.

C.No.3233/52 dated 1st Aug.52.

Sir,

Sub:- CRIMINAL JUSTICE - Krishnapur Mutt Case - C.C.No.202/50 on the file of the Additional First Class Magistrate, Mangalore - Now Pending in the High Court - Instructions.

I shall thank you to foward to me the reports sent to Government by the District Magistrate of South Kanara in connection with the Krishnapur Mutt Case, C.C.No.202/50 on the file of the Additional First Class Magistrate, Mangalore as for my request for any instructions the District Magistrate had asked me to get the copies of the reports from the Government if necessary.

The case comes up for hearing on Monday the 4th Aug.1952.

V. T. Rangan 1/8

Public Prosecutor.

MKN-1/8.

RS 1/8

Issue at once

Special 2/8/52

IN SECTION

Home Dept. 66 1

Memo. No. 19933. Pr. III/52-11 Dt 2-8-52.

Crl. Justice - Krishnapur Mutt Case - Ce. No. 202/50 on the file of the Addl PP Mangalore - now pending in H.C - Copies of the reports of the DT. South Kanara -

Ref:- From the P.P. Madras, CNo 3233/52 dated 1.8.52.

Copies of the reports of the D.T. S. Kanara CNo 1087/52 M.H.C dated 22.2.52 and 14.4.52 on the above subject are furnished to the P.P, Madra

1 Dt 2/52

p 66 cf

To ~~be sent by S.M.~~ 2/8/52 pp 13-15 cf pp 49-50 cf The P.P. Madras, (with copies of pp 13-15 cf and pp 49-50 cf) by Spl. messenger

Dt 2852

2.8.52

p 65 cf

70

Home dept

C No 19933 Pr III/52.

Memo No. 19933 Pris III/52-12 dated 15/X/52

Crl. Justice - Krishnaswamy Mutt case - C.C. No. 202/50 on the file of The A.F.C.M Mangalore - now pending in High court - Stage

Ref:- ~~Correspondence ending with~~ P.P's letter No. 3233/52 dt. 1-8-52.

The P.P, Madras is requested to state the ~~stage~~ at which the above case stands at present.

In the P.P., Madras.

PBS
14/10/52

72

From
Sri V.T. Rangaswami Ayyangar,
B.A.B.L.,
Public Prosecutor,

Madras.

To
The Secretary to Government,

Home Department,

Madras.

C.C.202/50S.K., dated 20th October, 52.

Sir,

Sub:- CRIMINAL JUSTICE - Krishnapur Mutt Case - C.C.No. 202/50 on the file of the Additional First Class Magistrate, Mangalore - Result of the Case.

Ref:- Memorandum No.19933-Prisons III/52-12, Home, dated 15th October, 1952.

The above case came on for hearing on 4-8-1952 when the High Court ordered that the case should be withdrawn and directed the same to be tried by the District Magistrate, Coimbatore.

V.T. Rangaswamy

Public Prosecutor.

20/X/52

MKN-201/10.

Issue 7/2/10

7/4

Home dept

CNO 19933/52

Memo No. 19933/Jus.III/52-13 dt 23/10/52

Criminal Justice - C.C. No 202 of 1950 on the file of the Addl. First class Magistrate, Mangalore, South Canara dt transferred to the D.M. Coimbatore (Prof) by the High court (Krishnapur Mutt case) — stage of the case.

The P.P., Madras has reported that the above case came on for hearing on 4.8.52 when the High court ordered that the case should be treated withdrawn and directed the same to be tried by the D.M. Coimbatore. The collector of Coimbatore is requested to report to Govt the stage at which the case stands at present. If it has been disposed of, a copy of the judgment

2224

18

should be forwarded to Govt.

23/x/52

18
23/10/52

To the Collector & Commissioner
Copy to the Collector of South Kanara
R.D 15/11/52

76

Home dept.

Issued in file in post

Memo No 19933 Poll III/52-14 Dated 24/X/52

Criminal Justice - C.C. No 202 of 1950 on the file of the Addl. First class Magistrate, Mangalore, South Kanara dt transferred to the D.M. Coimbatore, by the High court (Krishnapur Mutt case) =

P724 Ref:- from the P.P. Madras C.C No. 202/50 S.K. of 20.10.52

The P.P Madras is requested to obtain and forward to Govt a copy of the High court's order transferring the above case to the D.M. Coimbatore.

S's orders despatch at p40 of 25/X/52

To the P.P, Madras R.C.D. 13/11/52

SE 23/X/52 16 28 x 52

PBS 24/10/52

From
Sri V.T. Rangaswami Ayyangar, B.A.B.L.,
Public Prosecutor,
Madras.

To
The Secretary to Government,
Home Department,
Madras.

C.C.No.202/50 SK dated 27th Oct.52.

Sir,

Sub:- CRIMINAL JUSTICE - C.C.No.202/50 on the file of Additional First Class Magistrate, Mangalore, Transferred to the District Magistrate, Coimbatore by the High Court, Madras (Krishnapur Mutt Case). Copy of the High Court judgment - Forwarding.

Ref:- Memorandum No.19933-Prisons III/52-14, Home dated the 24th October, 1952.

A copy of the High Court judgment in the above matter is herewith forwarded for reference and return.

Home deptt

Subtd. for perusal. The main file on the subject has been sent to R.W. on 27.X.52. Its return may be awaited till 5-XI-52

V.T. Rangaswami

Public Prosecutor.

27.X.52

IN THE HIGH COURT OF JUDICATURE AT MADRAS.
Monday, the fourth day of August
One thousand nine hundred and fifty-two.
Present:-

The Honourable Mr. Justice Satyanarayana Rao
and
The Honourable Mr. Justice Rajagopalan.

C.C.No. 202 of 1950 on the file of the Court of the Additional First Class Magistrate of South Kanara, withdrawn to the file of the High Court by order dated 15-4-1952 in Crl.M.P.No. 547 of 1952, on the file of the High Court.

His Holiness Srimad Vidyarathna Theertha Swamiar of Krishnapur Mutt in Shivalli Village, South Kanara. --- Accused.

ORDER:- This case coming on for further to orders, upon perusing the order of the High Court dated 17-4-1952 herein and upon hearing the arguments of Mr. M.K. Nambiar and Mr. C.F. Louis, Advocates for the Petitioner and of the Public Prosecutor on behalf of the State, the Court made the following,

ORDER:

(Order of the Court pronounced by Satyanarayana Rao, J.)

The substantial question of law relating to the interpretation of the Constitution that arises in the case was considered by us in a previous case which is reported in Shri Shirur Mutt v. Commissioner of Hindu Religious Endowments Board, Madras (1). In that judgment we pointed out that the position of a Mathathipathi was not that of a trustee in the sense in which that word is understood in law, and we came to that conclusion, notwithstanding the very wide definition of "trustee" adopted in section 6(19) of the Madras Hindu Religious and Charitable Endowments Act (Act XIX of 1951). The matter therefore has to be disposed of by the Magistrate in the light of our observations in the above said decision, and the case has to be sent back.

(1) 1954 - I M.L.J. 557.

Cr 81

-2-

No doubt under Article 228 of the Constitution, when the question of law that has been raised and which relates to the interpretation of the Constitution is answered, the case has to be sent back to the Court from which it has been withdrawn. But we think, having regard to the peculiar circumstances of the case, and the Question of law involving some difficulty, and also in the interests of justice, that we should exercise our power of transfer under section 526 Cr.P.C., we transfer the case to the Judicial District Magistrate, Coimbatore. for disposal according to law.

Mr. Nambiar learned counsel for the petitioner represents that the accused will not ask for a trial de novo before the Judicial District Magistrate. But the petitioner may be permitted to recall such of the witnesses for the prosecution as are absolutely necessary for further cross-examination.

The records will be transmitted to the District Magistrate (Judicial) with a direction that the case should be disposed of as expeditiously as possible.

(Sd.) S.K. Gajendram Naidu,
Deputy Registrar, Appellate Side.

/True co y/

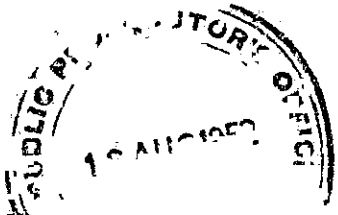
Sub Assistant Registrar, Appellate Side.

To
1. The Additional First Class Magistrate, South Kanara, Mangalore.
2. Do. through the District Magistrate, South Kanara.
3. The District Magistrate (Judicial) Coimbatore (with entire records).
4. The Public Prosecutor, Madras.
5. C.C. to Mr. M.K. Nambiar and Mr. C.F. Louis, Advocates for the Petitioner on payment of usual charges.

MTG.

63

Dated, 4--8--1952.



ORDER.

C.C.No.202 of 1950 A.F.C.M., South Kanara
(Crl.M.P.No.547 of 1952 on the file of
the High Court.)

Transferring C.C.No.202/50 from the file of the Court of Additional First Class Magistrate, South Kanara, Mangalore, (withdrawn to the file of the High Court in Crl.M.P.No.547/1952)to the Court of the District Magistrate, (Judicial) Coimbatore for disposal according to law.

84

From:
Sri.E.P.Royappa.M.B.E.(MILY)I.A.S.
Collector of Coimbatore.

To:
The Secretary to Government,
Home Department,
Fort St George,
Madras.

Ref: 4718/52 M-D3

Dated: 4.11.52

Sir,

CRIMINAL JUSTICE - C.C. 202/50 on the file of the Addl First Class Magistrate Mangalore, South Kanara District - Transferred to the District Magistrate (Judicial)

Ref: Govt. memo. no. 19933 Prisons III/52-13 Home dated 23.10.52

The case ended in acquittal on 31.10.52. I am addressing the District Magistrate (Judicial) to send me a copy of the judgement in the case. I shall send it on receipt.

For Collector.

MD.7.11.

86

From

[illegible] Collector of [illegible]

To

[illegible]

L. Dis.4718/52-M. dated 26-11-52.

Sir,

Criminal Justice - C.C.202/50 on the file of the Additional Ist Class Magistrate, Mangalore, South Kanara district transferred to the District Magistrate, Coimbatore (Judicial) by High Court - Judgment - Copy sent.

Ref: 1) Govt. Memorandum No. 19923 Prisons/III/52-13 Home dated 23-10-52.
2) My Ref: 4718/52-M.D3 dated 4-11-52.

I enclose a copy of the Judgment in C.C.421/52 on the file of the District Magistrate (Judicial), Coimbatore.

223961

(Encl: 1)

For Collector

26/11/52

Issue in Tech^a

Home dept

Memo No. 19933 (6) IV/52-11 dt 5/11/53.

Subject - Crl. Justice - C.C. No. 421 of 1952 on the file of the District Magistrate, Coimbatore (Krishnapur Mutt case.)

Ref:- Correspondence ending with the letter from the Comm^r for Hindu Religious and Charitable Endowments (Adm) Department No. 7268/52-5 - Adm dt 17.4.52

PS to M

The Commissioner for Hindu Religions and charitable Endowments (Adm) Department is referred to the judgment in C.C. No. 421 of 1952 on the file of the DM (Genl),

Coimbatore in which the accused Vidhyarathna Theertha Swamiyar of Krishnapur Mutt was acquitted of offences of criminal breach of trust. He is requested to after his remarks in consultation with the D.M. South Kanara, whether an appeal to the High court against the order of acquittal should be filed.

5.1.1953

5.1.53

3.1.53

5-1-53

6.1.53

To the Commr. for Hindu Religions and Charitable Endowments (Admn)

dt. 6.1.53

To the D.M. South Kanara

Govt Order No 46 W dt 28.1.53

90

Office of the Commissioner for Hindu
Religious & Charitable Endowments,
Madras-17.

Letter No. 7268/52-8-Adm. dated 27.1.1953.

***

From

Sri T.M. Chinnaiya Pillai, M.A., B.L.,
Commissioner, Hindu Religious & Charitable Endowments,
Madras.

To

The Secretary to the Government of Madras,
Home Department, Fort St.George, Madras.

Sir,

Sub:- Criminal justice - C.C.No.421 of 1952 on the file of the District Magistrate, Coimbatore (Krishnapur Mutt case).

Ref:- Government Memo No. 19933 Courts IV/52-17 dated 5.1.53.

A copy of the judgment in C.C.No. 421 of 1952 on the file of the District Magistrate Coimbatore, was received by me from the Deputy Commissioner, Coimbatore only today.

I consulted the District Magistrate, South Kanara in my letter No. 7268/52-6-Adm. dated 9.1.53 as to whether an appeal may be preferred to the High Court, and he replied today that he was also not in receipt of a copy of the judgment and requested me to obtain and send a copy of the same, with my remarks thereon. Since the Government have directed to send the report, not later than 28th January 1953, I am to state that the Government may consult the Public Prosecutor at Madras and decide the question of filing an appeal.

ms.27.1.

Yours faithfully,

Commissioner.

18144
29/1

92

Ref. C3. 236/53 (3)

S.K.Dt.Magistrate's Office,
Mangalore dated 27.1.1953

From

Sri C. A. Ramakrishnan, B.A., B.L.,
Dt.Magistrate, South Kanara.

To

The Secretary to Government,
Home Department,
Fort St.George, Madras 9.

Sir,

CRIMINAL JUSTICE: CC.No.421/ of 1952 - on the file of the District Magistrate Coimbatore - Appeal against acquittal recommended.

****

Reference Government Memo.No.19933/Courts-IV/52-17 Home/dated 5.1.1953. Department
2. Letter No. 7268/52-6 adm. dated 9.1.1953 of the Commissioner for Hindu Religious and Charitable Endowments Madras 13.

19960 31/1

****

I consider that this is a fit case to be taken up to the High Court in appeal against acquittal for the following reasons:-

(i) Most of the P.Ws are characterised as liars, interested persons etc., whereas the D.Ws are treated as respectable persons. The magistrate seems to have adopted one standard for the P.Ws. and another for the D.Ws.
(ii) Even the H.R.C.Board is alleged to have a motive. Para 21 of the Judgment suggests that officers of the H.R.C.Board are 'interested' and that the Board has 'pressed' witnesses to depose for the prosecution.
(iii) The accused does not appear to have been specifically questioned about each of the circumstances appearing against him. Person like the C.I.(Mallia) Appi, Krishna Sait etc., could have been examined as court witnesses if the Magistrate felt the evidence was necessary in the interests of justice.
(iv) If the charges framed by the Additional First Class Magistrate (General) Mangalore were vague etc., the magistrate could have framed revised charges.
(v) The legal position of a trustee etc., as expounded by the magistrate does not appear to be sound.
(vi) The judgement shows that from the outset the magistrate was at pains to discover reasons and loopholes to justify an acquittal.

I therefore recommend that the matter may be taken up with the High court in appeal against the order of acquittal passed by the District Magistrate Coimbatore in CC.421/52 on his file. As this is a case tried at Coimbatore the Public Prosecutor, South Kanara has not been consulted. Copy of the judgement in duplicate is enclosed.

Yours faithfully,

28/1/53

1/2 For Dt.Magistrate.

Copy to the Commissioner Hindu Relgious and Charitable Endowments Madras 17.

27.1.1953

Home dept

Memo No. 19933 Jus IV/52-18 9 5/2/53

No. 19933 cts IV/52 ---- Crl. Justice - Appeal against acquittal - ---- C.C. No. 421 of 1952 on the file of the ---- District Magistrate, Coimbatore - Application

Ref:- from the D.M., South Kanara, C3. 236/53 (3) dt. 27.1.53.

pp'd 30/1/53

Referred to the P.P., Madras for remarks which he is requested to offer not later than 20.2.53.

M/4 2/2/53

Dpd 30/1/53

2/2/53

The P.P. Madras 4/2/53

(with a copy of plf. and judgment in orgl)

to thereto with reply

Sri V.T.Rangaswamy Ayyangar,
B.A.,B.L.,
Public Prosecutor,
Madras.

To
The Secretary to Government,
Home Department,
Madras.

Opinion No.38 -- 1953, dated 9th February 1953.

Sir,

Sub: CRIMINAL JUSTICE - Appeal against acquittal -- C.C.No. 421 of 1952 on the file of the District Magistrate, Coimbatore, -- Forwarding Opinion.

-- -- --

para 1 -- With reference to Memorandum No.19933 Cts. IV/52-18, Home, dated 5th February 1953, I have the honour to give below my opinion in the above matter.

2. The enclosures received for reference are herewith returned.

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12 FEB 1953 TO GOVERNMENT

29580 — 1/52

O P I N I O N.

The accused is the Swamiyar of Krishnapur Mutt at Udipi and he was charged with the offence of criminal breach of trust in respect of the properties belonging to the Mutt between the years 1939 and 1946 and the items of properties in respect of which criminal breach of trust is alleged to have been committed are given under three different categories in the list appended to the charge. It is unfortunate that the charge should specify that the offences were committed between the years 1939 and 1946 which is directly in contravention of the provisions of the Criminal Procedure Code in so far as specific moveables are concerned. Secondly, various items of moveables had been given and a consolidated charge could not be framed as it cannot be stated that all these items were misappropriated by the accused on any one occasion or during any space of time between the period of 12 months as contemplated by the Code, and no details as to when the misappropriation took place was also not furnished in the charge and it is very unfortunate that in the case which appears to have been investigated for a long period the charges on which the accused was sought to be tried have been framed in this manner which had justified the observations of the learned District Magistrate in the opening paragraph of his order of acquittal. The objections to the legality of the charges do

p.t.o.

seem to be well founded, in my opinion, and are not liable to be upset in an appeal against acquittal.

On the facts also it transpires that in connection with the complaint of the year 1946 investigation appears to have gone till 1949 when the charge sheet had been laid in this case on 6-6-49 as per Ex.P-15, and it is now very nearly 3½ years since the charge sheet had been laid. On the evidence the learned District Magistrate had come to the conclusion that there is no proof of entrustment by the predecessor-in-office of the accused evidenced by any document and was not inclined to attach any weight to the oral evidence adduced in the matter and the appreciation of the evidence cannot be said to be so perverse or unreasonable as to warrant interference in an appeal against acquittal. The evidence of the other witnesses who claim to have seen some jewels or other has also been discounted on the ground that they appear to have some grudge or ill-will towards the accused and the reasons that had been assigned by the learned Magistrate as to why he discounts the oral evidence adduced in support of the prosecution in the opinion of the learned Magistrate was due to some motive, which it may not be necessary to discuss at this stage. On the whole, in my opinion, in the absence of positive proof of entrustment or proof of misappropriation in the light of the decision of our High Court in the Shirur Mutt case referred to in the order of the learned District Magistrate the appreciation of the evidence by the learned District Magistrate cannot be characterised as perverse or warranting interference in an appeal against acquittal as contemplated by their Lordships of the Supreme Court in their latest decision. Thus on facts as well as on law the appeal against acquittal is not likely to succeed.

V.T. Rangaya Reddy

Public Prosecutor.

2.63

RR 11/2

Home Department

G.O. Ms. No. 851 dated 13.3.53

Criminal Justice - Appeal against acquittal - C.C.No. 421 of 1952 on the file of the District Magistrate (Judl.) Coimbatore - Application - Declined.

Read: From the Commr., Hindu Religious and Charitable Endowments, Madras, letter No. 7268/52-8, Admn., dated 27-1-53
From the D.M., South Kanara C3.2366-53 dated 27-1-53
From the P.P., Madras Opn. No. 38 of 1953 dated 9-2-53.

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Order

The Government do not consider it advisable to appeal to the High Court against the acquittal by the D.M. Coimbatore (Judl.) of the accused in C.C.No. 421 of 1952 on his file.

2. A copy of the opinion of the Public Prosecutor Madras is forwarded tothe D.M., South Kanara and the

and the Commissioner, Hindu Religious and Charitable Endowments Madras, for information.

To the D.M., South Kanara
(with copy of pp. 96-97 c.f.)
To the Commr., Hindu Religio and Charitable Endowment Madras (witha copy of pp. 96-97 c.f.)
Copy to the P.P., Madras
Copy to R.W. Dept.

Home (Pr.III) Department

Criminal Justice - C.C.No. 202 of 1950 on the file of the Additional First Class Magistrate, Mangalore, South Kanara district --Request for Stay of proceedings and withdrawal of Prosecution.

From Sri K.Subraya Aithal, General Agent, Sirur Mutt, Udipi(South Kanara) dated 31-1-52

Extract of Secy.'s note at p. 1 c.f.

Examine urgently. R.W.D. will have to see. Is South Kanara a "Sepn". District.

O.P.
2-2-52

Sri Vidyarathna Theertha Swamigalavaru of Krishnapur Mutt, Udipi stands chargeu before the Additional First Class Magistrate, Mangalore South Kanara district in C.C.No.202 of 1950 on his file for offences of criminal breach of trust-an offence punishable under section 409 IPC- in that he has secreted or otherwise done away with some valuable movable properties of the Mutt. The petitioner, Sri K. Subraya Aithal, General Agent, Sirur Mutt, one of the Asta Matagalu (eight mutts) of Udipi, has requested the Govt. to direct the withdrawal of the case and to order "stay of proceedings of the case" pending final orders on the petition on the following grounds:-

(1) As the head of Sri Krishnapur Mutt, Swamigalavaru has vast powers over the Mutt and its properties. He has very wide discretion in dealing with them. A Criminal Court can never be the forum to determine the limitation of his power and discretion.

(2) Certain enemies of the Matadhipathi managed through their henchmen to the Board of Hindu Religious Endowments, Madras false information that he has secreted or otherwise done away with some valuable movable properties of the Mutt. Please see also para 3 of the petition at pp. 1-2 c.f. ~~also~~.

(3) The Board without itself enquiring into this information and without also calling on the Executive Officer to take steps under 78 of the Madras Act II, 1927 laid a complaint before the police.

(4) This has caused great consternation in the minds of the Devottes of the Mutt.

(5) If the Matadhipathi is once dragged to court any amount of vindication afterwards will not undo the disgrace.

(6) It will also cause a break in the daily worship of the diety which can only be performed by the Matadhipathi and this break cannot be thought of with equanimity by any orthodox Hindu.

(7) The charge of criminal breach of trust is not sustainable as the Matadhipathi does not come under any of the class of persons enumerated in sec. 409 I.P.C in respect of the Mutt and its properties.

(8) The provisions of the Madras Act II of 1927 and its successor, Madras Act XIX of 1951 regarding the removal of Matdhipathis and appointment of Executive Officers are ultra vires as offending articles 25 and 26 of the constitution.

(9) Under the above circumstances to proceed further with the case in the court is vexatious and unjust. (It will not serve any useful purpose) On the other hand it will only offend the religious sentiment of the innumerable disciples of the Mutt in particular and the Madhwa community in general.

It will be seen that the petitioner has made the request for the withdrawal of prosecution pending against Swamigalavaru as he is deeply interested in the maintenance of the fair name and prestige of the Asta Matagalu of Udipi. It is also seen that the Matadhipathi has taken the above criminal proceedings as serious on his position and prestige and has left the Mutt, wandering about in shattered health. Please see the copy of the charge sheet filed in the Court of the A.F.C.M. Mangalore in the case at p. 5 c.f.. Sri V.L.Ethiraj has stated that he has been duly instructed to appear on behalf of the petitioner.

There is no scheme of Separation of Judiciary from the Executive in the South Kanara Dt. As regards the request of the petitioner to stay further proceedings in the case pending final orders on the request of the petitioner, it is submitted that the Govt.have no powers to order "stay of

proceedings in the case. The proper course in this case is to obtain an adjournment of the case. The full facts of the case are not available in the petition.

For orders whether the remarks of the Collr. of South Kanara may be obtained urgently in the first instance. He may be also requested to instruct the prosecuting counsel not to oppose the adjournment motion if the petitioner applies to the Court for an adjournment on the ground that his petition for withdrawal of prosecution is pending with the Govt.

R.W.may see for remarks.

20.6.1951

22225

Removed

Homeno 19933 Pro/51

2.2.52 3/2/52

4/2/52

R.W

The note of Home on pp 1-3 ante may be perused. This Deptt. may agree with the proposal at A above and may suggest that the Collector of S. Kanara may be asked to submit the revised Memo. H.R. &C.E (D) Deptt.

5.2.52

6.2.52 6.2.52

ASSISTANT SECRETARY TO GOVERNMENT
5-FEB1952
HOME (WELFARE DEPARTMENT)

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
5-FEB1952
5470
DEPARTMENT

Ro.V.O 5470/52-1
6.2.52

FEB 1952
HOME DEPARTMENT

Home deptt

A above proposal of this deptt. at 'A' above has been agreed to in R.W. vide their note above. A draft memo to Collr of S. Kanara is submitted for approval.

11.2.52 11/2/52

11-2-52

4/ 1993

21.2.52

This is going through very leisurely & possibly the case is already over. Action should have been taken more expeditiously at every stage. The draft is clumsy (since touched up by me) and the date prescribed 1.3.52 (time allowed by me) is too short. (No urgency has yet been realized by anyone. Better work should be done.)

The draft may please H.M (L.D) has already spoken to me on the subject.

19/2

H.M (L.D) 19/2/52

p9 c

(Issued as memo No. 19933 Pr III/52-2, Home, 9/13.2.52)

SECRETARY TO GOVERNMENT 13 FEB 1952 HOME DEPARTMENT

From the D.M., South Kanara CNo. 1087/52 M1 the 9/22.2.52 pp13-15 c/f

With reference to the memo at the D.M., South Kanara at p9 c/f, please see a copy of his report at present pp13-15 c/f. sent to Govt. through the Commissioner Hindu Religious and Charitable Endowment Madras. The D.M. has also forwarded the original of this reference (to Govt) intended to be forwarded to Govt thro' the Comnr H.R.E. by mistake please see the original reference at pp16-18 c/f This may be returned to the Comnr. The corr ence at p18 c/f is for U.S.S

JOINT SECRETARY TO GOVERNMENT pp13-15 13 FEB 1952

pp16-18 c/f

GOVT 1 FEB 1952

signature: After issue a note will be put up. ~~instructions required.~~

26/1/52 26.2.52

26/1/52

This file deals with the request of Sri K. Subraya Aithal, General Agent, Sirur Mutt, that the case pending against Sri Vidya Ratna Teertha Swamiyar of Krishnapur Mutt, Udipi in C.C.No. 202 of 1950 on the file of the A.F.C.M., Mangalore for offences of criminal breach of trust, may be withdrawn.

para 7, p 3 cf

In the memo. at p. 9 c.f., the Collr. of South Kanara was asked to offer his remarks on the request of the petitioner through the Commr., Hindu Religious and Charitable Endowments with a copy direct to Govt. He was also asked to issue instructions to the Prosecuting Counsel not to oppose any motion for adjournment, if the Swamiyar applied to the Court for an adjournment on the ground that the petition for withdrawal of prosecution was being examined by Govt. The Collr. of South Kanara has now submitted his report. The advance copy of the report is at pp. 13-15 c.f.. The copy of the Collr.'s report submitted through the Commissioner, Hindu Religious and Charitable Endowments has not yet been received. The petition is however examined below, in order to save delay in the light of the Collector's remarks.

pp 1-4 cf

pp 13-15 cf

pp 13-15 cf

2. The circumstances under which the prosecution was launched are as follows:

para 2, pp 13-14 cf

Sri Vidya Ratna Teertha Swamiyar accused in C.C. 202/50 is the trustee of Krishnapur Mutt, Udipi one of the renowned eight Mutts of Udipi. He was a minor when he was installed in office in the year 1935. He attained majority in 1938 and towards the end of 1939 or at the beginning of 1940 and took over the management

of the affairs of the Mutt directly himself. Though the Math came under the control of the H.R.E.Board prior to 1935, there was apparently no regular audit of the Maths accounts at any time before 1941. In September 1941 the accounts relating to two years, roughly corresponding to 1938-39 were audited and the report of the auditor disclosed certain defects in the management of the Math's affairs. It is also reported that the Math which owned considerable properties had huge debts and that a proper register of valuable jewels belonging to the Math which had to be maintained under sec.38 of Madras Act II of 1927 was not maintained, or at any rate the Swamiar was not prepared to disclose it in spite of notices issued to him. In November 1946 a scheme for the management of the Maths affairs was framed by the H.R.E. Board. The accused filed a suit O.S.1/47 on the file of the District Judge South Kanara against it but it was dismissed with a few amendments to the scheme settled by the Board. In 1943 a list of gold and silver jewels, vessels and other movables owned by the Math was filed on behalf of the Math before the Board by the Manager of the Math. As it was not in order the Swamiar was asked to prepare a fresh register in accordance with the rules. The Swamiar did not however produce the register at the time of the verification by the H.R.E. Inspector Udipi. The Asst. Commr. on 5-9-45 issued a communication to the Swamiar calling for an exhaustive list maintained under Sec. 38, verified and signed by the Trustee. On 1-8-46, the Commr. H.R.E.Board visited the Krishnapur Math and on that occasion asked the Swamiar to produce the jewels register of the Math which had been produced before the auditor at the time of the audit for fasli 1350. It is said that the Swamiar did not have the register that on the same day he had a list signed by the then Manager filed before the Commr.. That list was thereupon sent to the Asst. Commr. for verification after comparing with the properties and the register of jewels already inspected by the auditor during the course of the audit for fasli 1350. The H.R.E. Inspector reported that the entries in the list were correct but that the jewels could not be weighed as the Swamiar did not afford facilities to do it. In the meanwhile a petition was received by the Board

alleging that the Math which was formerly one of the richest Maths in Udipi with a large income and plenty of gold properties, was being mis-managed by the Swamiar; that he was not observing the "Yathi Deeksha" properly and was leading a life of pleasure. It also alleged that he had sold most of the valuables of the Math, worth more than 3 lakhs of rupees that he had shown false debts and that he had purchased properties and bungalows in the name of his relatives from funds he had wrongfully amassed from the math and requesting that suitable action might be taken in the matter. The Secy. H.R.E. Board addressed the District Supdt. of Police, South Kanara on 30-5-49 requesting him to investigate into it, and enclosed a copy of the petition and the statements recorded during the enquiry. He also reported that some of the jewels and valuables belonging to the Math were reported to have been either suppressed or misappropriated by the Matadhipa. The police conducted an enquiry and laid a charge sheet on 6-4-50 for an offence punishable under sec. 409 I.P.C. The charge against the accused is that he, being the trustee of Kalimardhana Krishna Devaru of Krishnapur Mutt and in such capacity ~~on or about May 1939 at Udipi~~ being entrusted with certain properties, to wit gold ornaments of the deity worth all one lakh of rupees, committed criminal breach of trust with respect of the said properties between 1939-46.

3. The petitioner has urged for the withdrawal of the case on the following grounds:

(1) As the head of Sri Krishnapur Mutt, the Swamiji has vast powers over the Mutt and its properties. He has very wide discretion in dealing with them. A Criminal Court can never be the forum to determine the limitation of his power and discretion.

(2) Certain enemies of the Matadhipathi managed to convey through their henchmen to the Board of Hindu Religious Endowments, Madras false information that he has secreted or otherwise done away with some valuable movable properties of the Mutt.

(3) The Board without itself enquiring into this information and without also calling on the Executive Officer to take steps under 78 of the Madras Act II, 1927 laid a complaint before the police.

PTV

(4) The prosecution has caused great consternation in the minds of the Devotees of the Mutt.

(5) If the Matachipathi is once dragged to court any amount of vindication afterwards will not undo the disgrace.

(6) It will also cause a break in the daily worship of the diety which can only be performed by the Matachipathi and this break cannot be thought of with equanimity by any orthodox Hindu.

(7) The charge of criminal breach of trust is not sustainable as the Matachipathi does not come under any of the classes of persons enumerated in sec. 409 I.P.C. in respect of the Math and its properties.

(8) The provisions of the Madras Act II of 1927 and its successor, Madras Act XIX of 1951 regarding the removal of Matachipathies and appointment of Executive Officers are ultra vires as offending articles 25 and 26 of the constitution.

(9) Under the above circumstances, to proceed further with the case in the court is vexatious and unjust. It will not serve any useful purpose. On the other hand it will only offend the religious sentiment of the innumerable disciples of the Math in particular and the Madhwa community in general.

Item (1) only above In support of contention (1), the petitioner has cited the decision of the Privy Council reported in I.L.R.44 M. 831 and the decision of the High Court of Judicature at Madras in CMP No. 2501/1951 dated 13-12-51. The Collr. of South Kanara has stated that the Privy Council decision was given with reference to the applicability of Art. 134 of Schedule I of the Indian Limitation Act, 1908, in connection with the grant of a permanent lease over a part of a Mutt property, not proved to be subject to a specific trust. The Collr. does not think that this decision is helpful to the accused in this case. He also points out that at any rate this factor has been placed before the trying magistrate on behalf of the accused. As regards the very recent decision of the Madras High Court, the Collr. has reported that it has not been reported in the law reports. The relevant portion from the type written copy of the High Court's recent judgment relating to the relationship of the Matachipathi to the Mutt and its properties is however reproduced below for facility of reference:

"From this review of the authorities, it may be taken as established that the head of the mutt is not a trustee in the sense in which that word is used in the law of Trusts, and his position cannot be brought under any legal label known to English jurisprudence. He is not even a life tenant in respect of the properties permanently vested in the mutt or the religious institution. He has a right to the income but he has no power of disposition over the corpus unless necessity or benefit is established. He has large powers over the surplus of the income after meeting the demands of the institution such as

its maintenance, the maintenance of the disciples and the performance of the daily worship etc. He has the discretion to use the surplus for spiritual objects and that discretion is unfettered so long as the surplus is not diverted to any immoral or wicked purposes. He has the liberty to accumulate the income. The padakanikas are at his absolute disposal. If, however, it is established that any specific property has been vested as a trustee in the head of the mutt, to that extent and in respect of that property, he becomes a trustee. In other respects he is not liable to account for the income much less to the padakanikas. He is a person with manifold rights and duties. He is the spiritual head; he is the teacher and the guru. He has to carry on the worship of the deity installed in the mutt, maintain the disciples and propogate the views of the religion of the institution. His life is one of discipline and non-attachment to worldly things and he is expected to meditate and study and further the creed of the mutt. Such institutions are autonomous bodies governed and controlled by the directions and orders of the head of the Mutt. He is treated almost as a representative of the Godhead by his disciples and the followers. He is held in high esteem and the disciples consider any extraneous control over the head as lowering the dignity and the prestige he enjoys as such head. These are some of the salient rights and duties of a Matathipathi. It follows that to some extent he has the beneficial ownership of the properties while in respect of some of the properties he may be a manager. No doubt, the management of the properties may bear a secular aspect but the secular and the religious aspects cannot be dissociated as they are inextricably mixed up when it is once established that the property and the income are at the disposal of the Swami for the sole and exclusive purpose of the spiritual welfare of himself and his disciples and followers.

In the light of this recent decision of the High Court, Legal may perhaps be requested to advise whether there is any force in the petitioner's contention.

5 Item(2) above (on p7)

From the facts set out in para 2 above (on pp 5-6 ante), it appears that this allegation is not true. The Collr.'s report does not speak about the alleged enmity.

6 Item (3) above (on p7)

The Collr. has stated that the procedure prescribed in sec. 78 of the Madras Act II 1927 has to be followed only in a case where a person appointed as a trustee of a math or has been appointed to discharge the functions of a trustee and such person is resisted in obtaining possession of the Math, records, accounts and properties etc. He considers that this section is not applicable in a case of criminal breach of trust by a trustee. Madras Act II of 1927 has been repealed and has been succeeded by Madras Act XIX of 1951. Sec. 87 of the Madras

Act No. XIX of 1951 corresponds to section 78 of the Act II of 1927. Section 87 prescribes procedure in the matter of putting a trustee or executive officer in possession of the religious institution. This section does not seem applicable in a case of criminal breach of trust. The petitioner's contention does not therefore seem tenable. Legal & R.W.may also see for remarks in this connection.

7] Items (4),(5), (6) and (9) on p8 above

The Collr. has reported that the representation of the petitioner that the conviction of the accused will offend the religious sentiment of the innumerable disciples of the Math is not correct and that on the other hand it will have a deterrent effect upon the trustees of other maths in South Kanara Dt. He has also reported that the accused is a notorious person with a very bad reputation in those parts of the district.

8 Items (7) and (8) on p8 above

The petitioner contends that the charge is not sustainable as the Matadhipathi does not come under any of the of persons enumerated in sec. 409 I.P.C. in respect of the Mutt and its properties. The Collr.considers that it cannot be disputed that the Swamiar is an agent of the deity to whom the jewels belong and that the dietys being the proprietor of the jewels, the Swamiyar whether he is a trustee or not within the meaning of the term in the statute relating to trustees, is clearly an agent of the proprietor. ~~In view of the above position,~~ The Collr. is of theopinion that the contention of the petitioner has no legal force. By advancing the argument (referred to at A above) the Collr.seems to have relied on Retanlals commentary on "Law of Crimes" under the heading "Trustee". In this connection it may be noted that provisions regarding the appointment of Executive officers have been declared to be ultra vires the constitution by the Madras High Court. Sections 53, 54 and 55(2) of the Madras Act XIX 1951 which prescribe the procedure regarding (1). filling of vacancies in the office of the trustee (2) fixing standard scales of expenditure and (3) requiring the Trustee to keep regular accounts of all receipts and disbursements in respect of any gift of property or money made as a personal gift to him as the head

of the math have also been declared ultra vires the constitution. The High Court has also stated that the matathipath is not a mere trustee but he occupies a peculiar position and has beneficial ownership to some extent in the property and the income. The Hon'ble Judges have further stated that the matathipathi cannot be correctly described as a "trustee" owning no beneficial interest in the property under his management. In the circumstances the question whether the charge of criminal breach of trust is sustainable in this case seems to be doubtful. Legal (Opn.) and R.W. may see for remarks.

9 The charge sheet in this case was filed on 6-4-50 and the trial concluded on 24-11-51. Judgment has not yet been pronounced.

10. The Collr. has stated that the progress of the case is being watched with keen interest by the public; that the trial of the accused is long over and that he is evading appearance before the court to receive the sentence. He considers that the withdrawal of the case at this stage will be interpreted by the executive to save the accused from clutches of law. He does not recommend withdrawal of the case. The remarks of the Commr. H.R. & C.E. in the matter are awaited. (R.W. dept and Legal (Opinion) ~~and R.W.~~ may see for remarks before circulation.

29.2.52 29.2.52

Whatever the legal opinion may be, in view of the stage at which the Case now stands - his appearance & send in Court to receive judgment - it does not seem the expedient to consider withdrawal of the Case.

A on page 10 ante may also

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above seen.

16 no
1-3-52

5

We have not yet received the remarks of the H.R.E. Bd. Before this deptt. expresses an opinion R.W & Legal may pass for very urgent remarks.

1/3

R.W | Legal Opinion

Rural Welfare (V) Deptt.

Home Lr
No 19933 Prim/S
1-3-52.

ASSISTANT SECRETARY TO GOVERNMENT
1-MAR1952
RURAL WELFARE DEPARTMENT

Rwd
4.30 P
1.3.52

This file relates to the request of one Sri K.Subraya Althal, General Agent, Sirur math for the withdrawal of the case pending against Sri Vidya Ratna Theertha Swamiyar of Krishnapur math, Udipi in C.C.No. 102 of 1950 on the file of the A.F.C.M., Mangalore for the alleged offence of criminal breach of trust. A copy of the report of the Collector of S.Kanara sent thro' the Commr. H.R.& C.E.(Adm) deptt. on the requestof the petitioner is on pages 13-15 C.F. The original sentir thro' the Commr. has not yet been received.

2.The reasons put forth by the petitioner in support of his request for the withdrawal of the case are enumerated in para 3 of the Home deptt's notes on pages 7-8 above.

3.Reasons 2,4,5,6 and 9 These are dealt with in paras 5 and 7 of the Home department's notes on pages 9-10 above. This deptt. have no remarks to offer on them.

4.Reason 3. Please see para 6 of the notes of Home ~~in para 6~~ on pages 9-10 above. The view of the Home deptt. is correct.

5.Reasons 7 and 8 These are examined in ~~paras~~ paras 2 4 and 8 of the notes of Home deptt. on pages 8-9

and 10-11 above. In C.M.P.No.8591/ 51 the High Court of Judicature at Madras has held that certain sections of the H.R. & C.E. Act, 1951 providing for control over the maths are ultravires as far as the Sirur math and maths of similary nature are concerned. It was decided to appeal to the Supreme Court against the judgment of the High Court. Legal may be requested to advise whether in view of the recent judgment of the High Court it is necessary to withdraw the present criminal case pending against the head of the Krishnapur math. Home may be requested to circulate the case to H.C.M. dso.

14527

R.W.U.O. 14527 V/52
3.3.52.

2.3.52

A

This Dept will offer its remarks after the receipt of the report of the Comr. H.R. & C.E. Dept

May be passed on to Legal

2.3.52

ASSISTANT SECRETARY 3204 3 MAR 1952 LEGAL DEPARTMENT

B

Prima facie there is some force in the contentions raised by the Petr. But before a definite opinion is given in the matter, this dept would like to see the report of the Commissioner, H.R. & C.E., which has already been called for.

Legal

7/3/52

Home

Legal U.O. No. 4461 8/3.
3204 e/52.

ASSISTANT SECRETARY TO GOVERNMENT 17029 8-MAR 1952 RURAL WELFARE DEPARTMENT

From the comnr. Hindu Religious and Charitable Endowments (Adm) dept No. 7268/52-3, Admn

dt 4-3-52

The remarks of the comnr. Hindu Religious & Charitable Endowments (Adm) dept since received are at pl 17 c/f

Govt Ver R.W. and Legal (Opn) may see with reference to 'A' and 'B' above.

W.P. No 14933/52-4
8/3/52

7.3.52
7.3.52

8/3
8/3/52.
R.W/Legal (Opinion)

14

R.V.N

Previous note. R. Thus dept on -/5/12/13 and and the report of the Commr. H.R & C.E.(B) dept on 5/17 C.f. may be read. In the circumstances stated by the Commr it is for orders whether this dept may agree with his views at 'A' on 5/17 C.f.

The Case may be passed on to Legal (Opinion)

AGV
10/3/82

10.3.82

In Nov. 1946, in pursuance of sec.63 of the H.R.E. Act, 1927, the H.R.E. Board framed a scheme for the management of the Sri Krishnapur Math, Udipi. The trustee of the math filed a suit in O.S.1/47 in the file of the District Judge, South Kanara against this scheme. The scheme was amended by the District Court, but the suit was dismissed. The subject matter of the suit is now pending before the High Court.

In pursuance of the scheme, which was confirmed by the Dt.Court that the President H.R.E. Board required the trustee of the temple to produce for verification the accounts and other registers as well as the jewels of the math. ~~Finding certain discrepancies therein and~~ After obtaining the necessary report from the ~~Inspector, H.R. Endowments,~~ Executive Officer on a petition received by him, the case was handed over to the police who have filed a charge-sheet for misappropriation against the trustee which is now pending before the Addl.First Class Magistrate, Mangalore.

The criminal prosecution has proceeded on the basis that the H.R.E. Board had powers to interfere with the properties - movable and immovable - of the math and of the trustee.

2/ In a recent case (C.M.P.2591/51) which came up before the High Court (Sri Shirur Mutt case), the Hon'ble Judges - Justice Sri Satyanarayana Rao and Justice Sri Rajagopalan - have, in the concluding portion of the judgment, observed

as follows:-

"To sum up, we hold that the following sections are ultra vires the State Legislature in so far as they relate to this mutt; and what we say will also equally apply to other Mutts of a similar nature. The sections of the new Act are: Sec.20, 21, 25(4), section 26 (~~though it~~ to the extent section 25(4) is made application), section 28 (though it sounds innocuous, it is liable to abuse as we have already pointed out earlier in the judgment), section 29, clause (2) of section 30, section 31, section 53(because Courts have ample powers to meet these contingencies), section 54, clause (2) of section 55, sec.56, clause (3) of section 58, section 59, sections 63 to 69 in Chapter VI, clauses (2), (3) and (4) of sec.70, sec.76, sec.89 and sec.99(to the extent it gives the Govt. virtually complete control over the Matathipathis and Mutts). Since sec.5 of the new Act has repealed the earlier Act, the Madras Hindu Religious Endowments Act, Act II of 1927, and since we are not holding the whole new Act ultra vires, it is unnecessary to go into detail in examining which of the provisions of the earlier Act were ultra vires the State Legislature tested by the fundamental rights guaranteed by the Constitution. If a decision were necessary, we should say that the sections in the earlier Act which correspond to the sections of the new Act enumerated above as being ultra vires will also be ultra vires."

It will be seen from the above that they have held sec.58(3) of the new Act and the corresponding sec.63(2) of the old Act to be ultra vires. No doubt, the Govt. are preferring an appeal against the decision of this judgment to the Supreme Court. Pending that decision, it seems that the judgment of the High Court is operative. If this is the admitted legal position, the action of the H.R.E. Board in having taken steps to launch a prosecution on the basis of the power conferred on them by the scheme, and on the report which is not correct. As the judgment in the criminal case has not already been pronounced before, i.e., before the findings of the Hon'ble Judges in the C.M.P. referred to above and as it seems that the whole question is one of adjudication of civil rights, it is for consideration whether the criminal cases should be proceeded with further.

May be sent to Legal for advice.

10.3.52

10.3.52

Legal.

R.W.U.O 17029 V/52-1
10.3.52

ASSISTANT SECRETARY
35940
10 MAR 1952
5.50 PM
LEGAL DEPARTMENT

16

Legal dept

I have discussed this case with the Home Secy. I agree with him that, in view of the advanced stage at which the case now stands, when everything is over except the delivery of the judgment, it will not (ordinarily) be right for the Govt to withdraw the prosecution. Withdrawal of the prosecution at this late stage will provoke serious public criticism. The only thing which gives me pause is that if the Swami is now sent to jail for however short a while (although he may be acquitted on appeal; and there is every chance of his acquittal, in view of the uncertain state of the law and the grave doubts cast by the recent judgment of Satyanarayana Rao and Rajagopalan JJ.), he will, for ever, lose his office But this is a consideration to which Home dept must give due weight before arriving at the final decision.

15/3/52

Home dept

[Summary]

Home (Pr.III) Department

This case deals with the petition of Sri K.Subraraya Aithal, General Agent, Sirur Mutt, Udipi, that the case pending against Sri Vidya Ratna Theertha Swamiyar of Krishnapur Mutt, Udipi in C.C.No.202 of 1950 on the file of the A.F.C.M., Mangalore for offences of criminal breach of trust, may be

para 7, p34

withdrawn. The petition has been examined in this department's note at pp. 5-11 ante. The D.M. South Kanara and the Commr., Hindu Religious and Charitable Endowments have been consulted and their remarks will be found at pp.13-15 c.f. and p.17 c.f. respectively. The charge sheet in the case was filed on 6-4-50 and the trial concluded on 24-11-51. Judgment has not yet been pronounced.

2. The main points urged in the petition for the withdrawal of prosecution are as follows:-

(1) As the head of Sri Krishnapur Mutt, Sri Vidya Ratna Theertha Swamiyar has vast powers over the Mutt and its properties and a criminal court can never be the forum to determine the limitation of his power or discretion and

(2) that the prosecution has caused great consternation in the minds of the devotees of the Mutt; that if the Matathipathi is once dragged to court, any amount of vindication afterwards will not undo the disgrace and that it will also cause a break in the daily worship of the deity which can only be performed by the Mathathipathi.

Contention (1) above:

The criminal prosecution was instituted on the basis that the Hindu Religious Endowments Board had powers to interfere with the properties of the Mutt and of the trustee. In a recent case (CMP. 2591/51.Shirur Mutt case) the Hon'ble Judges, Justice Mr. Satyanarayana Rao and Justice Mr. Rajagopalan, have referred to the relationship of the Matathipathi to the Mutt and its properties. They also found that certain sections of the new H.R.E. Act were ultra vires . R.W.Dept.have stated that if this is the admitted legal position, the action of the H.R.E. Board in having taken steps to launch prosecution on the basis of the power conferred on them by the scheme and on the report of the Executive Officer appointed by them is not correct. Attention is also invited in this connection to the Legal Secy.'s note at p.16 ante. He has also referred to the uncertain state

of the law.

Contention (2) on p.17 above

The D.M., South Kanara has stated that the representation of the petitioner that the conviction of the accused will offend the religious sentiments of the innumerable disciples of the Mutt is not correct; that on the other hand it will have a deterrent effect upon the trustees of other Mutts in the district. The D.M. has also stated that the Matathipathi is a notorious person with a very bad reputation in those parts; that he is evading appearing before the court to receive the sentence and that withdrawal of the case at this stage will be interpreted by the public as an unwarranted interference by the Executive to save the accused from the clutches of law. The Commr., H.R.,& C. Endowments submits that there are no grounds for the withdrawal of prosecution, especially when it is seen that all that remains to be done is the pronouncement of judgment and that the religious susceptibilities of disciples are urged to avoid judgment. J.S.Home has noted that whatever the Legal opinion may be, in view of the stage at which the case now stands, it does not seem expedient to consider the withdrawal of the case. Legal Secy. has discussed the case with the Home Secy. and has stated that he agrees with him that in view of the present stage of the case, it will not ordinarily be right for the Govt. to withdraw the prosecution. The Legal Secy. has also stated that the only thing which gives him pause is that if the Swami is once sent to a Jail, for however short a while, he will, for ever lose his office. This he has stated is a point for Home Dept. to give due weight. Attention is invited, in this connection, to the remarks of the D.M., S.Kanara at A above.

In the circumstances, submitted for orders whether the petition may be rejected. For orders as to circulation.

17.3.52

The difficulty pointed out by Legal Secretary at Y above can perhaps be overcome under the provisions of Sec.426 Cr.P.C.

under which the trial court can let a convicted accused on bail for a reasonable time to enable him to apply to the Appellate Court to suspend the sentence pending result of his appeal) But the more serious objection to proceed with the prosecution though only delivery of judgment remains to be done seems to be what is stated at X on p.17 ante by R.W.Dept. namely that the sections of the H.R.E. Act under which the H.R.E Board had powers to investigate and institute prosecution are now held ultra vires by our High Court. No doubt Supreme Court will take some time before they decide the appeal which Govt. are preferring but pending a final decision on this, we may consider the desirabili of obtaining a long adjournment through P.P. in view of the uncertain position of law and if necessary move the High Court for the same.

A

18/3/52 T.S.|S.

Who is to take the initiative for a long adjournment or for stay of further proceedings

18/3/52

If A above were to be finally approved it will be the prosecution that will have to take the initiative for long adjournment and if there is any difficulty to get it, the High Court will have to be moved through P.P. Madras by or on instructions from Govt.

E

18/3/52 T.S.|S

We may leave it to the

1995

20/ Let accused come in the matter & instruct the A.P.P on P.P not to oppose the request.

16/20
18-3-52

7/192

$

we may leave it to the ~~A.P.~~ A.P. to move for a long adjournment & if not granted move the High Court also & instruct our P.P. not to oppose the grant of adjournment. At the same time we may ask the Collr to report in consultation with the D.S.P & local P.P Nuzvid the H.R.E Bd on the point raised in the notes of R.W at pp 14 & 15 ante & more or less instructed by the legal Secy.

A

ordering of withdrawal of charge sheet at this stage would be most embarrassing to Govt Nuzvid the position may become easier after a further examn of the legal points raised

B

U.B.52

H.M (A.R) 20/3/52

H.M 21/3

SECRETARY TO GOVERNMENT
21 MAR 1952
HOME DEPARTMENT

Please see the orders in circulation at p.20 ante. A draft memo. is submitted for approval. No reply to the petitioner seems necessary. R.W.may perhaps see after issue.

24.3.52

24.3.52

24.3.52.

R.W. (a.i.)

R.W.V

This Dept. last noted on pp. 14-15 ante. The subsequent note of Legal Adviser on p. 20 ante, the order of circulation on p. 20 ante, the draft memo. on pp. 31-32 ante may be perused & the file returned to Home.

25.3.52.

25.3.52

Home

Home (Pr.III) Department

From the Desciples of Sri Krishnapur Mutt, Udipi, petition dated 26-3-52

Extract of H.M.(L.R.)'s minute at p.33 c.f.

"Examine and discuss with me on the 29th."

H.S.R.
27.3.52

Extract of the Secy.'s orders at p. 33 c.f.

"Please examine and put up before the morning of 29-3."

C.P.
27.3.52

PTD

12

This file deals with the petition for the withdrawal of the prosecution pending against Sri Vidyaratna Thirtha Swamiar of Sri Krishnapur Mutt., Udipi in C.C.No.202/50 on the file of the A.F.C.M. Mangalore. The charge against the accused is that he in his capacity as the trustee of the Krishnapur Mutt, being entrusted with certain properties, to wit gold ornaments of the deity worth in all one lakh of rupees, committed criminal breach of trust with respect of the said properties between 1939 and 1946. The charge sheet in the case was filed on 6-4-50 and the ~~trial~~ trial concluded on 24-11-51. Judgment has not yet been delivered. Please see in this connection the orders in circulation at p.20 ante and the memo. to the Collr. of South Kanara at pp.31-32 c.f. The petition at pp.33-37 c.f. is from Sri U.Rama Rao M.L.C. and 11 others stated to be disciples of the Krishnapur Mutt. The petition is examined below.

2. The disciples apprehend that insistence on the presence of the accused on the day of the judgment is intended for the purpose of convicting him and that such a course would tend to cause disgrace to the spiritual Guru in the eyes of the world. The desciples apprehension does not seem to be without substance. The A.F.C.M. has issued a non-bailable warrant for the production of the accused. In a proved case under section 409 I.P.C. (Criminal breach of trust) imprisonment is imperative. Under sec. 366 (2) Cr.P.C. the accused shall, if not in custody be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted. It may not however be necessary for the accused to immediately suffer punishment. even if sentenced to imprisonment, as under the provisions of sec. 426 Cr.P.C. the trial court can let a convicted accused on bail, for a reasonable time to enable him to move the appellate court to suspend the sentence pending result of his appeal.

3. The petitioners contend that the prosecution initiated by the Secy. H.R.E. Board is contrary to the elementary

principles of law that a Matathipathi should commit criminal breach of trust in respect of properties of which he is not a trustee; that recently the High Court had occasion to consider in a writ petition preferred by the Shirur Matathipathi the nature of the rights of the Head of the Mutt in the properties of the Mutt and that it has been held that the Matathipathi is not a trustee in the general sense of the term.

A copy of the recent judgment of the High Court in the writ petition preferred by the Matathipathi of the Shirur Mutt, Udipi is put up at flag (E) below. In that judgment the Hon. Judges had occasion to discuss at length the relation of the Matathipathi to the Mutt and its properties. After review of the various authorities on the subject, the Hon'ble Judges have given a summary of their views which will be found in the portion of the judgment from X on p.57 of (E) to Y on p. 59 ibid. The Hon'ble Judges views are also extracted in the note at pp. 8-9 ante. They have held that the head of a Mutt is not a trustee in the same sense in which the word is used in the law of Trusts; that his position can not be brought under any legal label known to English jurisprudence and that he has beneficial ownership to some extent in the property and income. The learned judges have also held that the Matathipathi has the discretion to use the surplus for spiritual objects and that discretion is unfettered so long as the surplus is not diverted to any immoral or wicked purpose.

4. The petitioners have also contended that after the constitution came into force, no scheme framed by the H.R.E.Board could have any legal validity and that the new H.R. & C.E.Act which came into force in 1951 is equally void and unenforceable. The petitioners understand that the Swamiar of the Krishnapur Mutt has taken out a writ petition to restrain the scheme from being enforced against the Mutt and that an order of injunction has been passed by the

High Court on 24-3-52, restraining such enforcement. The petitioners further understand that the prosecution is unsustainable in law and that the alleged acts of the Matathipathi even if true, cannot amount to an offence.

In Nov. 1946. in pursuance of sec.63 of the old H.R.E.Act of 1927, the H.R.E. Board framed a scheme for the management of the Sri Krishnapur Math Udipi. The head of the Mutt filed a suit in O.S. 1/47 on the file of the District Judge, South Kanara against the scheme. The scheme was amended by the District Court but the suit was dismissed. In pursuance of the scheme, which was confirmed by the Dt. Court the President, H.R.E.Board required the head of the Mutt to produce for verification the accounts and other registers as well as the jewels of the Mutt. After obtaining a report from the Executive Officer and on a petition received by the President, the case was handed over to the police who have filed a charge-sheet for misappropriation against the Matathipathi which is now pending before the Addl.First Class Magistrate, Mangalore. The criminal prosecution has proceeded on the basis that the H.R.E. Board had powers to interfere with the properties-movable and immovable-of the math and of the trustee. Section 58 of the Madras Hindu Religious and Charitable Endowments Act, 51 gives powers to the Deputy Commissioners to frame schemes (for administration of Maths) Section 58(3) defines the powers and duties of the trustee. In the recent judgment which came up before the High Court (Shirur Mutt case) the Hon'ble judges have held that section 58 (3) of the new Act and the corresponding section 63(2) of the old Act are ultra vires. In view of the above judgment it has previously been noted that the action of the H.R.E.Board in having taken steps to launch prosecution on the basis of the power conferred by the Scheme is not inorder. In his note at p.16 ante, the Legal Secretary has also referred to the uncertain state of law and has stated that there is every chance of acquittal. The point referred to at A above has been specifically put to the Collr. of South Kanara for remarks and he has been asked to submit his report in

consultation with the local D.S.P. & the P.P. and through the Commr. H.R. & C.E. The Collr.'s report is awaited.

5. The petitioners allege that the action of the Govt. in persisting on a prosecution against the spiritual head of the thousands of respectable and pious Brahmins in South Kanara will tend to inflame their religious feelings and that prosecution cannot be construed as other than an intention to disgrace the spiritual Head by arresting him and subjecting him to humiliation. The Collr has, however, stated that the Matathipathi is a notorious person with a very bad reputation in these parts; that the progress of the case is watched with keen interest by the public and that the withdrawal of the case at this stage will be interpreted by the public as an unwarranted interference by the Executive to save the accused from the clutches of law. The Commr. H.R. & C.E. was also not in favour of withdrawal of prosecution. Attention is invited to this connection to the Secy.'s note at B on p.20 ante. The Secy. has noted that ordering of withdrawal of charge sheet at this stage would be most embarrasing to Govt. though the position may become easier after a fuller examination of the legal points raised.

6. In view of the rather uncertain state of law at present with regard to this case, the Govt. have decide to leave it for the accused to move the court of the A.F.C.M. Mangalore for a long adjournment of the case and the event of refusal of the same, to move, if so advised, the High Court also in the matter. The Collr. of South Kanara has been asked to instruct the prosecuting counsel not to oppose the grant of a long adjournment, when moved by the accused. The petitioner Sri K.Subraya Aithal was not informed of the above decision thus leaving ~~the initiative to take action~~ it to the petitioner to take initiative in the matter. There seem to be no objection, however to inform the petitioner that his petition for the withdrawal of prosecution is under consideration of the Govt. and that he may, if necessary,

move the trial court for the grant of a long adjournment and if refused move the High Court also in the matter.

7. As regards the request of the disciples that the non-bailable warrant of arrest be directed to be countermanded, it is submitted that the non-bailable warrant has been issued by the Court and the Govt. have no powers to direct the Court as requested. The warrant has however been issued only for the purpose of production of the accused to received judgment and if a long adjourment is taken, the warrant may not be executed.

8. In the circumstances it is for consideration whether the withdrawal of the prosecution will be sanctioned now without waiting for the report of the Collr. or the petitioner informed as at X above and the report of the Collr. awaited till 10-4-52.

The file may be submitted to the Secy. for discussion with H.M.(L.& R.) on 29-3-52. If prosecution is to be withdrawn H.C.M. should also see.

28.3.1952

28-3-52

28/3/52

28/3

we need not order withdrawal of prosecution at this stage nor can we instruct the Court to withdraw the arrest warrant. The petitioners - earlier & later - may be informed of the action we are taking & then we may be advised to move the Court for a long adjournment & if granted, the arrest warrant would strike naturally expected the final decision. Govt can come to a final decision after receipt the

discussed with H.M. not necessary 28/3

Report of the Collr. & H.R.E. Bd. and taking proper legal advice.

O.C.
29.3.

N.M (& R)

Awaiting report of the Collector etc.
29/3

pp39-41 f

Petition from Sri Rama Ra 31-3-52.

Extract of the Secretary's note 39 ff

examine whether any further [illegible] can
issue on this.

b39 f

O.P./31-3.

para 1, p39 f

Please see the petition from Sri K.Rama Rao, a disciple of Sri Krishnapur Mutt, Udipi at pp.39-41 c.f. and the Secy.'s orders extracted above. The petitioner has stated that apart from the falsity of the charges levelled against the Matathipathi, it was pressed before the trial Magistrate that the accused could not be tried in one trial on charges of criminal misappropriation in respect of many items of immovable properties alleged to have been committed during a period of six years and that therefore the proceedings ought to be quashed but this was not heeded. The petitioner has also stated that it was represented to the magistrate that the Matathipathi could not be charged under sec. 409 I.P.C. in respect of the movable properties of the Mutt and that time may be granted to produce a copy of the judgment of the High Court in CMP No. 2591/51 in support of the contention but that the magistrate refused to grant time. It may be noted in this connection that as this case involved many points of law, arguments were heard by the A.F.C.M. Mangalore for four days. The arguments concluded on 19-12-51. On 8-2-52, a petition was presented on behalf of the accused requesting the court to reopen the case for the defence. The Magistrate rejected

para 1, pp39-41 f

p41 f

(E)

para 3, p14 f

N on p14 f

that petition. Against the orders of the magistrate refusing to reopen the case, a revision petition was filed in the High Court. The revision petition was dismissed by the High Court. The sustainability of the prosecution under section 409 I.P.C. has however been examined by the Govt. The attention of the Collr. of South Kanara has been drawn to the legal position consequent on the judgment of the High Court in CMP.No.2591/51 and he has been asked to report after consulting the D.S.P. and the local P.P. and through the Commissioner, H.R. & C.E., whether the prosecution would be in order. On receipt of the Collr.'s report which is ~~expected~~ due by 10-4-52, a final decision will be taken.

Manu. p29 1/7 and para 8, pp10-1

2. The petitioner further says that on 28-3-52, a request was made to adjourn proceedings for one month on the ground that early orders were expected on the memorial submitted to Govt. but the request was turned down by the Court. Under sec. 344 Cr.P.C. the Court has the discretion to adjourn ~~the~~ a case. So far as the Govt. are concerned, the Collr. has already been asked on 24-3-52 to instruct the prosecuting counsel not to oppose the grant of a long adjournment, when moved by the ~~accused~~ accused. No instructions to the Court can be issued (regarding grant of adjournment) and it is open to the accused to move the High Court in revision against the order of the Magistrate refusing ~~trial~~ adjournment.

Sec. p41 1/2

cf para 2, p22

3. The petitioner requests that orders on the original memorial may be passed expeditiously and that pending orders, stay of further proceedings in the case may be ordered immediately. Attention is invited to the orders in circulation at p.27 ante. After discussion with the Secy., H.M.(L.R.) has ordered that the report of the Collr. may be awaited. The report is due by 10-4-52. The Govt. have no powers to order stay of proceedings in the Court. In the circumstances, the issue of any further proceedings does not seem called for.

pp1-4 1/7

para 5, p4 1/7

p21a 1/2

For orders. Legal (Cts.) may perhaps see with reference to A above.

Sec 4-4-52 4.4.52

4/4/52

we need not

not interfere in the matter now in any manner

4-4-52

Will the Collector's report is read & considered it does not appear to me expedient for Govt. to pass any orders.

8/4

Legal (Courts)

8 APR 1952

Home no no 19933 HR II/52-1

4.4.52

Legal (Courts) Department.

This Department agrees with the view expressed by the Home Secretary above, that no orders need be passed by the Government until the Collector's report is received and considered.

8/4/52

8/4/52

ASSISTANT SECRETARY 5184 4 APR 1952 LEGAL DEPARTMENT

S/Home

p. 43 cf
yal Vo 5784(1)

8/4/52

Home Dept.

From the Commr H.R. & C.E. (Adm.) dept. no. 7268/52-4 dt. 5/4

Please see the legal dept.'s note above. The Collector report called for in the memo at pp 31-32 cf has not yet been received. A draft reminder is subtd for approval. The Commr H.R.&C.E. (Adm.) dept. may also be asked to send a copy of the order of the High Court in W.P. 202/52 (for further examination)

The draft subtd provides for this.

A.D.O may be put up IMMEDIATELY

14/4/52

vide US's orders at p 43 cf

draft to Commr HR & CE received for issue

4.4.52

(Contd on C4)

A draft do to Collector is subtd with reference to Govt. orders overleaf.

14.4.52

14.4.52

14.4.52

(Issued as memo No 19933 Pr III/52-8, Home, Dt 14.4.52)

(Issued as D.O. Rly. No 19933 Pr III/52-9, Home, Dt 14.4.52)

From the Collector of South Kanara C.No. 1087/52 dt 14.4.52
From the Commissioner, Hindu Religious and Charitable Endowments No. 14359/52-1, Admn dt 16.4.52 and 7268/52-5 - Adm - dt 17.4.52.

This file deals with the petitions for the withdrawal of the prosecution pending against Sri Vidyaratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi in C.C.No.202/50 on the file of the A.F.C.M. Mangalore.

2. In the memo.at p.31 c.f., the Govt. observed that the prosecution against Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi has proceeded on the basis that the H.R.E.Board had powers to interfere with the properties, movable and immovable of the Mutt and of the Trustee; that in CMP No. 2591/51 (Shirur Mutt Case) which came up before the Madras High Court recently the Hon'ble the Judges held among other things that sec. 58(3) of the Madras Hindu Religious and Charitable Endowments Act, 1951 was ultra vires and that it therefore appeared that the action of the H.R.E.Board in having taken steps to launch a prosecution on the basis of the powers conferred on them by the Scheme and on the report of the Executive Officer appointed by them might not be quite in order. The Collr. of South Kanara was asked to offer his remarks on the above point in consultation with the D.S.P. and the local P.P. He was also asked to submit his report to Govt. through the Commr. H.R. & C.E.(Admn.). Please see the Collector's report at pp. 53-54 c.f. and the report of

the Commr. at p. 51 c.f..

3. The Collr.has stated that he had consulted the D.S.P. and the local P.P.on the point raised in the Govt. Memo. The Collr. says that he finds that a petition was received by the President, H.R.E. Board from some of the disciples of Sri Vidya Ratna Theertha Swamiyar alleging misappropriation of jewels handed over to the Swamiyar by his predecessor;that it was sent by the President to the Inspector of Endowments for report and that on receipt of the report, the Board forwarded the report and the petition to the D.S.P. South Kanara for such action as he deemed necessary. The Collr. has also stated that the D.S.P. registered a case for offences under secs. 406 and 409 I.P.C. against the Swamiyar. The A.P.P. who is in charge of the case says that the charge sheet was laid by the police and not by the Board and that in this case any body could have set the law in motion as the moveables came to Sri Vidya Ratna Theertha Swamiyar from his predecessor and that they did n relate to any income derived from the Temple nor were they the "Padakanika" which Swamiyar could spend as he please The D.S.P. says that it is not desirable to withdraw the case at this stage and that far from its being in the public interest to withdraw the case, it would be a serious reflection on the administration of Justice and would raise doubts in the public mind as to the absolute equality of all before the law if the case is withdrawn at this stage. The local Public Prosecutor also considers that it will be against public policy to withdraw the case now and that as the accused has gone again to the High Court for a writ to quash the proceedings in view of the judgment in C.M.P. No. 2591/51 (Shirur Mutt Case), it may be left to the accused to fight out the case in the High Court. He also thinks that judgment in CMP 2591/51 will not apply to the facts of this case and that the case need not be withdrawn on the ground that the decision in CMP No. 2591/51 went against the

prosecution. The D.M. South Kanara agrees with the D.S.P. and the local Public Prosecutor in considering that it is not desirable to withdraw the case against Sri Vidya Ratna Theertha Swamiyar of Sri Krishnapur Mutt, Udipi at this stage.

4. The Commr. Hindu Religious and Charitable Endowments, Madras has stated that the judgment of the High Court in CMP No. 2591/51 will not apply to the facts of the criminal case now in question. He supports the view of the Collr. that there are no grounds for withdrawing the prosecutions and that it is not desirable to do so. He also understands that an application was recently made to the High Court on behalf of the accused Swamiyar to quash the proceedings before the Magistrate but was rejected without being admitted.

5. A copy of the recent judgment of the High Court in the writ petition preferred by the Mathathipathi of Shirur Mutt, Udipi is put up at (E) below. The opinion of the local P.P. that the judgment in C.M.P.No.2591/51(Shirur Mutt Case) will not apply to the facts of this case ~~which is supported by the Commr. H.R. and C.E.~~ does not seem quite correct. In their judgment in CMP No. 2591/51, the learned judges have stated that what they say in respect of the Shirur Mutt will also equally apply to other Mutts of a similar nature. In that judgment various sections of the new H.R.E.Act were declared ultra vires Presumably on the basis of that judgment, the High Court has issued the injuction order, a copy of which will be found at p.57 c.f., restraining the Commr. H.R & C.E.Dept. and the Executive Officer, Krishnapur Mutt from enforcing any of the provisions of the Madras H.R.E. Act (XIX of 1951). The injunction order seems to support the view that the Krishnapur Mutt is similar in nature to the Shirur Mutt and that the judgment at (E) is applicable to the former. The statement of the A.P.P. in charge of the case that the chargesheet was filed by the Police does not seem to make much difference. It will be seen from the portion marked M on p. 24 c/f of the Collr.'s report that the initiative in the matter was taken by the H.R.E. Board.

The Board ~~was considering~~ had taken the initiative in the matter, because the H.R.E. Act had ~~not~~ conferred powers on it for the ~~management~~ administration of the Mutt. It would therefore appear that the prosecution, though launched by the police would not be sustainable. Legal may ~~kindly~~ be requested to advise.

6. R.W.Dept. may also see for remarks. The injunction of the High Court at p. 57 c.f. restraining the Commr. H.R. & C.E. and the E. O. Krishnapur Mutt from enforcing the provisions of the H.R.E.Act was issued in CMP No.3126/1952 in writ petition No. 202 of 1952. There is no information whether the writ petition has since been disposed of and whether any orders have since been issued by the High Court in respect of the criminal proceedings pending on the file of the A.F.C.M. Mangalore. R.W. may see in this regard also.

For orders. The file may be sent to R.W. and Legal (Opp.)

24.4.52.

26.4.52.

25/4/52

25-4-52.

From the Collr., South Kanara Ref. C.No.1087/52 MHC., dated 20-4-52. and 23.4.52

With reference to A.D.S.'s note at A above please see the letter from the D.M., South Kanara with its enclosur since received at pp.59-61 c.f.. The Collr. has sent a copy of the orders of the High Court dated 15-4-52 in CMP Nos. 547 and 548 of 1952 on the file of the High Court. The High Court has ordered that C.C.No.202 of 1950 on the file of the A.F.C.M., Manglore be withdrawn to the file of the High Court to be heard along with W.P. No.202 of 1952 on its file. High

34.

Court has also ordered that all proceedings in C.C.No. 202 of 1950 on the file of the A.F.C.M., Manglore be stayed pending further orders. In view of the above orders of the High Court it does not now seem necessary for the Govt. to examine the validity of the prosecution of the Mathadhipathi of Krishnapur Mutt in C.C.No.202 of 1950 on the file of the A.F.C.M. Manglore or to pass any orders on the petitions for withdrawal. The orders of the High Court may be awaited. R.W. and Legal may see before circulation.

The High Court has also directed the Addl.First Class Magistrate to withdraw the non-bailable warrant he has issued for apprehension of the accused.

26.4.52.

any action now. We need not take

Rural Welfare Dept

Home

No 19933 Prsn/52-11

29.4.52

The typed notes from the middle of page 30 above may be perused and the file passed on to Legal (Courts).

ADDITIONAL ASST. SECRETARY TO GOVERNMENT 29333 30 APR 1952 RURAL WELFARE DEPARTMENT

ASSISTANT SECRETARY 6832-C 3-MAY 1952 LEGAL DEPARTMENT

2.5.52

B. Legal

Legal (Courts) Department.

The petitioner has now obtained the orders of the High Court for transferring the criminal case to its own file and directing the withdrawal of the non-bailable warrant issued by the Magistrate against the petitioner. In view of this, no question of the withdrawal of the case by the Government arises.

Home may consider whether the petitioner should not be informed of the attitude of the Government, viz., that the Government do not propose to withdraw the prosecution. Some reply to his petition to the Government seems to be necessary.

K.V. Lakshmana 13/5,
K. Rajagopala 13/5
Home Dep

87159

Legal G.O. 6832-C/52-1
14/5/52

[Summary]

Home (Pr.III) Department

This file relates to the petitions for the withdrawal of the prosecution pending against Sri Vaidyaratnana Theertha Swamigalavaru, Matadhipathi of Krishnapur Mutt, Udipi, in C.C.No.202 of 1950 on the file of the A.F.C.M., Mangalore. The petitions have been examined in consultation with the Collr. of South Kanara and the Commr., Hindu Religious and Charitable Endowments. The Matadhipathi has however moved the High Court and has obtained orders from the High Court (High Court's) transfering the criminal case to its own file and directing the withdrawal of the non-bailable warrant issued by the Addl. First Class Magistrate, Manglore, against him. In view of the orders of the High Court, this Dept. noted that it seemed unnecessary to examine further the validity of the prosecution of the Matadhipathi

30

in C.C.No. 202 of 1950 on the file of the A.F.C.M. Mangalore or to pass any orders on the petitions for withdrawal. The Secy. noted that we may even close the papers. R.W. and Legal Depts. have seen the case. Legal Dept. have stated that Home may consider whether the petitioner should not be informed of the attitude of the Govt. viz., that the Govt. do not propose to withdraw the prosecution. In cases where the Govt. decline to interfere with the prosecutions pending in courts, it is usual to ask the Dt. Collr. to inform the petitioners concerned of the decision of the Govt. In this case, however no petitions have been received by the Govt. direct from the Matadhipathi. The petitions at pp.1-4 c.f. and at pp. 33-41 c.f. are from the disciples of the Matadhipathi. Further however the Govt. are not now taking any positive decision as contemplated at A above. They are not taking any further action because against the question of the withdrawal of the case by the Govt. does not now arise consequent on the orders of the High Court. In the circumstances, no reply to any of the petitioners seems called for.

'A' on p34 ante

S on p 31 ante

'H' on p35 ante

/A

cf p274 (P)

vide p1 cf ante

p33 cf

vide K on p.35 ante

/Ack

For orders whether the papers may be lodged.

Sey
28.5.52

28.5.52.

true of the important considerations to examine the question of withdrawal of Prosecution was the Uncertain position of Law in r/o the provisions of H.R.E Act by virtue of which Prosecution was launched Now that the Highcourt themselves have taken the matter up by their Special original

vide memo. at pp 31-32 cf

pp 61+64 cf

PTV

1952.

Box

2
31/5

37

Jurisdiction, the aspect loses importance as we can await an authoritative opinion on this from the High Court itself. No further action, therefore, seems necessary.

L Mayadeva 29/5/52 ~~ADS~~ $

MS 29/5/52

no further action is necessary on the part of the Govt. I do not think we need even send any kind of reply to the disciples of the Kattadipatti. The High Court is now seized of the matter and the final decision of the High Court may be watched as certain points of law have been raised which may be of general importance.

T. Pullaiah
30.5.52.

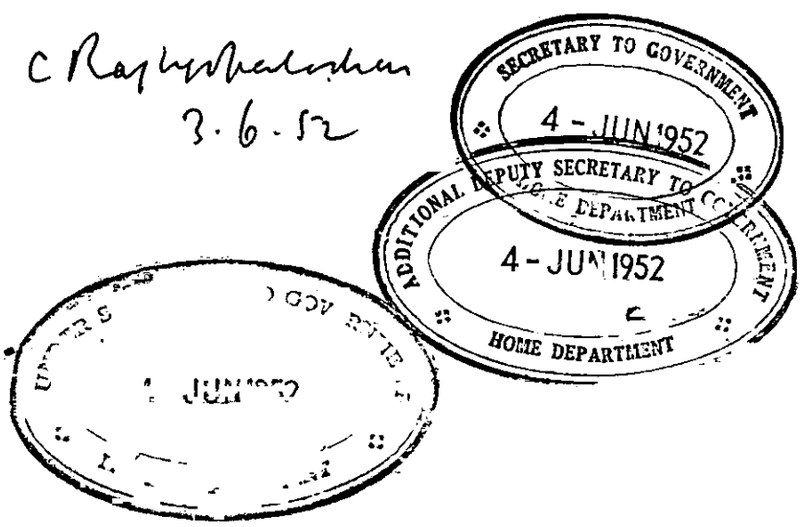
N.M (Law) K.D. Kuriyan 31-5-52
N.M (R.R) R. Venkataswami 2/6/52
HCJ

C Rajagopalachari
3.6.52

pp. 61 and 64 cf.

X

Cf pp 31-32 cF



38

Home Dept.

Please see the orders in circulation at page 37 ante. With ref. to X on p. 37 ante, this file may lie over till 1.8.52 to await the final decision of the High Court in this case. [The H.C reopens on 7.7.52]

5.6.52

5.6.52

From the Collr, South Kanara Ref. C. No. 5372/52 p65 cf
M. H.C Dy 28.7.52.

Please see the letter from the Collr, South Kanara addressed to the P.P., Madras at p 65 cf (copy sent to Govt). The Collector's references C No. 1087/52 M.H.C Dy 22.2.52 and 14.4.52 referred to at A on p 65 cf, are at pp 13-15 cf and pp 49-50 cf respectively. ~~It is not known in what connection the Public Prosecutor asked for the copies of the Collectors references referred to.~~ The P.P. may be furnished copies of the references, if he asks for them. pp 13-15 cf B pp 49-50 cf A cf B on p 65 cf

It it presumed that the case has been posted for hearing in the H.C on 4.8.52. ~~Dy~~ This may continue to lie over till 15.8.52 X on p 65 cf

1.8.52

1.8.52

Note Steps

Fm. the Public Prosecutor, Madras, C.No. 3233/52 dt 1.8.52.

With reference to A on p38 ante, please see the letter from the P.P. Madras at p66 cf requesting that copies of the reports sent by the D.F. S. Kanara to Govt in connection with the Krishnapur Mutt case may be forwarded to him. Copies of the reposts of the D.F. at pp 13-15 cf and pp 49-50 cf. may be sent to the P.P. Draft memo is submitted for approval.

-p66 cf

cf B on p 38 ante

tv
28/52

lle
2.8.52.

p66 cf p39 cf

(Issued as Memo No. 19933 Pr III/52-11 dt 2/8/52)

p72 cf

From the P.P. Madras C.C. 202/52 SK. dt 2nd 10 52

—

Please see the orders in circulation at p37 ante. With reference to 'x' on p37 ante it is submitted, the case came up for hearing on 4-8-1952 when the High court ordered that the case should be withdrawn and directed that it should be tried by the District Magistrate, Coimbatore. The case is presumably now pending on the file of the DM. Coimbatore. There is no information in this deptt whether the case has since been disposed of. For orders whether the Collector of Coimbatore may be addressed. Subject to orders a draft memo is subtd for approval. R.W. may see before issue

5 p12 cf

SK
23/x/52

lle
23.x.52.

The draft memo may move
The P.P. Madras may also be asked to
obtain and forward a copy of the
High Courts order. Draft please.

23/10/52

returned for

A draft memo to the P.P. Madras is submitted for approval.

23.X.52

23.X.52.

24/10/52 RW (ai)

201629

Home UO. 14933/Mis.III/52-15

28/10/52

Rw. V

May be returned & returned to Home.

28.10.52

29.10.52

Home dept

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
70240
28 OCT 1952
RURAL WELFARE DEPARTMENT

R.W.V.S 70240 I/52-1

From the P.P, Madras C.C NO. 202/50 SK. dt 27.10.52

29.10.52

p78 cf

With reference to the memo at p76 cf the P.P, Madras has forwarded a copy of the High courts order transferring the C.C.NO. 202/50 from the file of the Court of Additional first class Magistrate Mangalore (withdrawn to the file of the High court in crl M.P. No 547/52) to the court of the District Magistrate (Jud) Coimbatore for disposal according to law — please see the order at pp 80-81 cf.

pp 80-81 cf

p81 cf

2. The collector of Coimbatore has been asked to report the stage

pp 4 15 4

at which the case stands at present and of it has been disposed of, he has also been asked to forward a copy of the judgment in the case - please see the memo at pp 74-75 C/f.

4 Y & p75 4

the report is awaited till 15.11.52.

This may lie over till 15.11.52 or till the receipt of the report of the Collector whichever is earlier.

SE
1.11.52

VBS
1/11/52

lls
1.11.52

p84 4

from the collector of Coimbatore 4718/52-M-D3. dt 4.11.52

Please see the lie over orders above. The Collector of Coimbatore has reported that the case ended in acquittal on 31.10.1952 He has also stated that he is addressing the WM.(prosl), to send him a copy of the judgment in the case and that he will send it to Govt on receipt.

p84 4

The receipt of the copy of the judgment may be awaited till 25-11-1952.

SE
18/11/52

VBS
11/11/52

lls
10.11.52

from the Collector of Coimbatore Lr dis 4718/52-M. dt 26.11.52

42

From the Collector of Coimbatore L.Dis. 4718/52 M.
dated 26-11-52.

This file started with the petitions for the withdrawal of the prosecution against Sri Vidyaratna Theertha Swamiyar, the Matathipathi of Sri Krishnapur Mutt, Udipi in C.C.No. 202/50 on the file of the A.F.C. M., Mangalore for offences of criminal breach of trust in respect of the property of the Mutt.

2. In C.M.P. No. 2591/51 (Shirur Mutt Case) the Madras High Court held that the head of a Mutt is not a trustee in the sense that word is used in the Law of Trust and his position cannot be brought under any legal label known to English jurisprudence; that it is only if it is established that any specific property has been vested as a trustee in the head of the Mutt, that he became a trustee to that extent and that in respect of the properties not so specifically vested as a trustee, he has the beneficial ownership and he is not liable to account for their income much less for the Pathakanikas. In the memo. at p. 31 c.f. the Govt. observed that the prosecution against Sri Vidyaratna Theertha Swamiyar had proceeded on the basis that Hindu Religious Endowment Board had powers to interfere with the properties movable and immovable of the mutt and that in view of the High Court's judgment in the Shirur Mutt Case, the action of Hindu Religious Endowment Board in having taken steps to launch a prosecution was not in order.

3. While the case before the A.F.C.M., Mangalore was pending for delivery of judgment, the accused moved the High Court for quashing the proceedings before the A.F.C.M. in the light of the High Court's judgment referred to in para 2 above It was decided that the final decision of the High Court might be watched as certain points of law had been raised which might be of general importance. The case came up for hearing on 4-8-52, when the High Court ordered that the case should be withdrawn from the file of the A.F.C.M., Mangalore and directed

that it should be tried by the D.M., Coimbatore (Judl. in the light of their decision referred to in para 2 above - please see the High Court's order at pp. 80-8 c.f.

4. The D.M., Coimbatore who tried the above case has acquitted the accused. A copy of the judgment is at (M). It will be seen from the judgment that the D.M. has at length discussed:

(1) the legality of the charges framed against the accused;

(2) the question of altering the charge and conducting a denovo trial on the altered charge; and

(3) applicability of the decision of the High Court in C.M.P. No. 2591/51 (Shirur Mutt Case) to the case in question.

Legality of the charges ~~and~~ altering the charge

The accused ~~in the present case~~ was charged with having committed criminal breach of trust in respect of several items of property and not money. The D.M. held that the charge is bad and defective for being very indefinite, vague and embarassing; that even assuming that all these breaches of trust took place within one year, it is not feasible to treat the breach of trust of the several items of properties as one offence and that as the breach of trust in respect of each item of property is a separate offence, a separate charge has to be framed for each of them. The D.M. also considered the question of altering the charge already framed by the A.F.C.M., Mangalore and making the accused to stand a de novo trial. Examining at length the evidence for the prosecution the D.M. concluded that there is no reliable evidence on the prosecution side to show that the accused has either disposed of or converted to his own use any of the articles of the mutt. The Magistrate also found that even if the

+4

charge framed is to be altered, there is not a single item of property in respect of which a new charge can be framed and the accused convicted.

Applicability of the decision of the High Court in C.M.P.No. 2591/51 in the case in question:

The D.M. in his judgment has observed that it is necessary for the prosecution to prove not only that the articles in respect of which the accused is charged belonged to the Mutt but also that those articles are vested in the Head of the Mutt as a Trustee. He has pointed out that if the articles are proved to be the ordinary property of the mutt, it follows to some extent that the accused had a beneficial ownership in them. To establish that the articles in question are properties specifically vested in the Head of the Mutt as a Trustee, the prosecution has to prove that when the accused assumed management of the Mutt from the previous Manager in 1939 or 1940, these articles were either entrusted or handed over to the accused. The only direct evidence regarding the handing over or the entrustment of the properties by the previous Manager to the accused, is that of the Magistrate (P.W.5) has concluded that P.W. 5's evidence about the entrustment of properties cannot be relied upon and that if his evidence goes, there is no other direct evidence about the entrustment of any article to the accused when he assumed management. The D.M. has concluded that on the whole the prosecution evidence - direct and circumstantial and documentary - regarding the entrustment of any of the articles in question is not reliable and it cannot be safely acted upon. In acquitting the accused the D.M. has observed that there is no reliable evidence on the prosecution side to show that the accused has either disposed of or converted to his own use any of the articles of the Mutt.

para 29 p163 (A)

para 10, p69 (M)

p179 (A)

para 11, p79 (M)

para 11. p79 (M)

para 14, p10 (M)

para 23, p139 (A)

para 28, p163 (A)

'M' on p16 ante (M)

5 The date of judgment is 31-10-52. No proposals for filing an appeal against acquittal in the case have been received. The period of limitation for filing an appeal will lapse on 30.12 This seems to be however a matter primarily for R.W. They ~~may be requested~~ may see for remarks

~~too of their remarks if any.~~

SE 12.12.52

AM 13.12.1952.

Ile 12.12.52

~~A H S~~ II

Memo. No. 19933 dt 15/12/52.

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
16 DEC 1952
87259
LEGAL METRE DEPARTMENT

GN

(M)/16

p 1 to 28, (M)/16

This order has been the Case at p 40 ante. Further notes at least from p 42 ante may be read. The question now at issue is whether any appeal need be filed against the judgment of the Addl. Magistrate, Coimbatore at (M) whereby he has acquitted the respondents of six Coimbatore Merchants, charged with offences of Criminal breach of trust in respect of the properties of the said Merchants. In acquitting the accused, the A.M. has observed that there is no reliable evidence on the prosecution side to show that the accused has either disposed of or converted to his own use any of the articles of the Merchants. In the light of the above observations it seems doubtful whether the judgment can be

reversed in any appeal. The views of the Commr HR & C. E. (A) shd then with these obtained may be requested to Consult the Commr there and then remit the Case to this shd the further remarks if any.

25/12/52 26.12.52 26-12-52 26/12/52

R.4.4.087259 V/52-1
29.12.52
Home

Home depth

243593
29/12

With reference to this depth's note on pp 42-45 ante, please see the note of M.W. on pp 45-46 above. The comm. for Hindu Religious and charitable Endowments (Adm) depth may be addressed in the first instance as suggested by RW. A draft memo is subtd. for approval.

3.1.53.
3.1.53
5.1.1953
5-1-53

(Issued as memo No. 19933 dts IV/52-17 pp 88-89 C
of 5-1-53.)

From the commissioner Hindu Religious and Charitable Endowments Madras. p 90 C

From the D.M. South Kanara C3. 236/53. (3) p 92 C
of 27.1.53

(1)

This file started with the petitions for the withdrawal of the prosecution against Sri Vidyaratna Theertha Swamiyar the Matathipathi of Sri Krishnapur Mutt in C.C. No. 202/50 on the file of the A.F.C.M., Mangalore, for offences of criminal breach of trust in respect of the properties of the Mutt.

2. In C.M.P No. 2591/51 (Shirur Mutt case), the Madras High court held that the head of a Mutt is not a trustee in the sense that word is used in the law of Trust and his position cannot be brought under any legal label known to English jurisprudence; that it is only if it is established that any specific property has been vested as a trustee in the head of the Mutt, that he became a trustee to that extent and that in respect of the properties not so specifically vested as a trustee, he has the beneficial ownership and he is not liable to account for their income much less for the Pathakanikas.

3. While the case before the A.F.C.M. Mangalore was pending delivery of judgment, the accused moved the High court for quashing the proceedings before the A.F.C.M. in the light of the High court's judgment referred to in para 2 above. Secretary noted that the final decision of the High court might be watched as certain points of law had been raised which might be of general importance. M(Law) M(RR) and C.M approved the Secretary's note.

4. The case came up for hearing on 4.8.52, when the High court ordered that the case should be withdrawn from the file of the A.F.C.M. Mangalore and directed

that it should be tried by the D.M. Coimbatore (final) in the light of their decision referred to in para 2, p 47 ante. The D.M. Coimbatore who tried the case, acquitted the accused. A copy of the judgment is at (M) On the memo at pp 88-89 c/f. the Commissioner Hindu Religious and Charitable Endowments Madras was asked to offer his remarks before 28.1.53 in consultation with the D.M. South Kanara whether an appeal to the High court against the order of the acquittal of the accused in the case should be filed.

The Commr. has reported that the P.P Madras may be consulted and the question of filing an appeal may be decided. The D.M South Kanara considers that this is a fit case to be taken up to the High court in appeal against acquittal for the reasons at A on p92 c/f. In the circumstances it is for orders whether the P.P., Madras may be consulted. Subject to orders a draft memo is subts. for approval. R(W) and Legal (Opn) may see before issue.

Issue
Deptl can see after the P.P's opn is received

The date of judgment is 31.10.52 A on p92 c/f. on p88 c/f. p92 c/f. M on p16 c/f. (M)
1.2.53. Six months time limit to prefer an appeal expires on 30.4.53.

4/2/53

Issue
4.2.1953

(Issued as memo No. 199 33 cts IV/52-18, Home, Dt 5.2.53) p74 c/f.

From the P.P., Madras Opn No. 38 of 1953. dt 29.2.53. pp 96-97 c/f.

Please see the opinion of the P.P., Madras at pp 96-97 c/f holding the view that on facts as well as on law, the appeal against acquittal is not likely to succeed. If govt. differ with the opinion of the P.P., Advocate-General Madras should be consulted. S on p 47 c/f.

R.W and J Regal(Opn) may see for remarks. (One/Six months appeal time expires on 30.4.53)

14.2.1953

J.S 15/2

Regal(Opn)

R.W

This Advt. had saw the Case of Phas.46 and. further Notice of Appe from P.47 and may be read. In the Circumstances explained by the Public Prosecutor, ~~it is for Consideration whether~~ this Advt. may agree with the views of Appe at 'M' above

The Case may be passed on to Regal.

17/2/53

18.2.53

15.2.53

19.2.53

Legal

Legal (Opn Drafting-A) Department.

The prosecution case is based on very old transactions arising out of an alleged entrustment of certain ornaments and jewels in or about the year 1939 or 1940. The evidence regarding entrustment as well as misappropriation is very unsatisfactory. An appeal against acquittal is not likely to succeed on facts. The question of the legal status of the Swamiyar does not ~~therefore~~ arise in this case. This Department

ASSISTANT SECRETARY 3090-C 11 FEB 1953 LEGAL DEPARTMENT

therefore agrees that there is no case for an appeal against acquittal.

28.2.53 J.S 28.2.53 (Sealed cover) Cover

Home

Home (Cts.IV) Dept. Legal G.O. 3090-C/53-1

Summary

28.2.53 ASSISTANT SECRETARY TO GOVERNMENT HOME DEPARTMENT 28 FEB 1953 3712 pp 1-4 p334 p54

This file started with the petitions for the withdrawal of the prosecution against Sri Vidyaratna Theertha Swamiyar, the Matathipathi of Sri Krishnapur Mutt in C.C.No. 202/50 on the file of the A.F.C.M., Mangalore for offences of criminal breach of trust in respect of the properties of the Mutt.

2. In C.M.P.No. 2591/51 (Shirur Mutt Case), the Madras High Court held that the head of a Mutt is not a trustee in the sense that word is used in the Law of Trust and his position cannot be brought under any legal label known to English jurisprudence; that it is only if it is established that any specific property has been vested as a trustee in the head of the Mutt, that he became a trustee to that extent and that in respect of the properties not so specifically vested as a trustee, he has the beneficial ownership and he is not liable to account for their income much less for the Pathakanikas.

para 10, p69 abc d

3. While the case before the A.F.C.M., Mangalore was pending delivery of judgment, the accused moved the High Court for quashing the proceedings before the A.F.C.M. in the light of the High Court's judgment referred to in para 2 above. Secretary noted that the final decision of the High Court might be watched as certain points of law had been raised which might be of general importance. M.(Law) M.(R.R.) and C.M. approved the Secy.'s note.

M on p15 cf
X on p54 cf
cf X p37 ante
p37 ante.

4. The case came up for hearing on 4-8-52 when the High Court ordered that the case should be withdrawn from the file of the A.F.C.M., Mangalore and directed that it should be tried by the D.M. Coimbatore (Judl.)

p 80 cf

in the light of their decision referred to in para 2 p. 90 ante. The D.M. Coimbatore who tried the case, acquitted the accused. A copy of the judgment is at (M). In the memo. at pp. 88-89 c.f. the Commissioner Hindu Religious and Charitable Endowments, Madras was asked to offer his remarks inconsultation with the D.M., South Kanara; whether an appeal to the High Court against the order of the acquittal of the accused in the case should be filed.

The Commissioner that the P.P. Madras might be consulted and the question of filing an appeal decided by The D.M. South Kanara considers that this is a fit case to be taken up to High Court in appeal against acquittal for the reasons mentioned in his letter on p. 92 c.f.

The opinion of the P.P., Madras at pp. 96-97 c.f. that on facts as well as on law, an appeal against acquittal is not likely to succeed.

5 J.S. Home has noted that there does not seem to be a case to go in appeal against acquittal. R. & A. have agreed. Legal have noted that the evidence regarding entrustement as well as misappropriation is very unsatisfactory; that an appeal against acquittal is not likely to succeed on facts and that the question of the legal status of the Swamiyar does not arise in this case. They therefore agree that there is no case for an appeal against acquittal. If Govt. differ with the opinion of the P.P., Madras Advocate General should be consulted.

6 In the circumstances it is for orders whether the question of filing an appeal against acquittal may be dropped. Subject to orders a draft order is submitted for approval. [Six months appeal time expires on 30.4-53].

3/3/53

In the circumstances explained at A the office note dt

the question of filing an appeal against the acquittal may be dropped.

GR
7/3

Secy
8/3/53

Secy
9.3.53.

M (Law) K.V. Krishnan 10-3-53

M (Fin) L.V. Subramaniam 11.3.53

For CM.

In the court of the District Magistrate Coimbatore and the Nilgiris, Coimbatore.

Judgment in Calendar Case No. 481 of 1952 on the file of the District Magistrate of Coimbatore.

Complainant.	Deputy Superintendent of Police, Udipi (Crime No. 103/49).
Accused.	Vidhyarathna Theertha Swamiyer.
Offence.	Criminal Breach of Trust, Section 409 I.P.C
Finding.	Not guilty.
Sentence.	Acquitted under Section 258 (1) Cr.P.C.

(Sd) Rama Varma,

District Magistrate.

/True copy/

District Magistrate.

Serial No.	
2. Name.	Vidhyarathna Theertha Swamiyar.
3. Father's name.	Vidhyapurna Theertha Swamiyar.
4. Caste or Religion.	Shivalli Brahmin Hindu.
5. Occupation.	Swamiyar, Krishnapur Mutt.
6. Residence.	Karakal.
7. Age	31
8. Occurrence.	On or about May 1949.
9. Complaint.	26-7-1949.
10. Appearance of the accused.	17-9-1952 before the Dt. Magistrate, Coimbatore.
11. Release on bail.	...
12. Commencement of trial	On 13-10-52 (in this court).
13. Close of trial	15-10-1952.
14. Sentence of Order	31-10-1952.
15. Explanation for delay.	...

Calendar Case No. 481 of 1946.

Judgment.

The accused in this case was chargesheeted by the Deputy Superintendent of Police, Udupi, before the Additional First Class Magistrate, Mangalore, for having committed an offence under Section 409 I.P.C.

2. The accused is the Swamiyar of Krishnapur Mutt, which is one of the eight mutts in Udupi established by Sri Madhwacharya. The previous Swamiyar of Krishnapur Mutt attained samadhi in 1935 without nominating his successor. So the Swamiyar of Puthigal Mutt, which is a twin mutt of Krishnapur Mutt, ordained the accused as Swamiyar when he was a minor in 1935. One Damodhar was managing the affairs of the Krishnapur Mutt even during the period of the previous Swamiyar. On account of the minority of the accused Swamiyar, Damodhar was allowed to continue the management of the mutt during the minority of the accused. In 1938 the accused along with his father went to Benares for purposes of studies and he returned to Udupi in 1939. The accused attained majority in 1942. In the end of June 1943 or the beginning of 1940 the accused took over the management from Damodhar and thereafter he himself was managing the affairs of the mutt. There is no Mahathipathi for the Sri Krishna Mutt in Udupi. But the Swamiyar of each of the 8 mutts in turn presides over the temple of Sri Krishna every two years in every 16 years. At every change of Swamiyar at the end of two years, a festival known as Paryayam is celebrated on a very grand scale. The turn of the Krishnapur Mutt came in January 1943 and the accused was the Paryayam Swamiyar of Sri Krishna Mutt or Temple from January 1943 to January 1944. The succeeding two years was the turn of the Puthigal Mutt. Under Section 28 of the Madras Hindu Religious and Charitable Endowments Act every mutt has to maintain a register of jewels and moveables of the mutt in the prescribed form. Every year a return of the moveables has to be sent to the Endowment Board. The accused was not sending the list of jewels and moveables to the Board and the Board was asking the accused for submission of the same. In 1945 the accused for the first time sent a list (Ex. P. 17) of jewels and moveables.

In 1945, he sent another list (Ex. P.10) and in 1946 he sent a list (Ex. P.6). The Board was not satisfied with the list submitted by the accused and so the Board was asking the accused to send the return in the form prescribed under Section 36 of the Act. The accused, however, did not do it. In August 1946, one Commissioner I of the Endowments Board inspected the mutt of the accused. The Commissioner then received some representations that the accused Swamiyar had of late been mishandling the jewels and even disposing of them (see Ex. P.7, the inspection notes of the Commissioner). On 26-10-1946 the Board received from a petition signed by one Ramanathachar (P.W.4) and 9 others complaining about the mismanagement of the mutt properties by the accused Swamiyar and inter alia stating that the accused Swamiyar had sold most of the valuables of the mutt worth about Rs. 3 lakhs as detailed in the list attached to the petition. The Board directed the Assistant Commissioner Mangalore to make enquiries on the petition (Ex.P.1). After receipt of the report of their Inspector, the Board sent a complaint Ex. P.18 along with a copy of the petition Ex. P.1 to the District Superintendent of Police, Mangalore, for investigation. The complaint was forwarded by the District Superintendent of Police through the Deputy Superintendent of Police, Udipi, to the Circle Inspector of Police for personal enquiry and report. The Circle Inspector, Mallish, on receipt of the complaint registered a case under Section 406 I.P.C. and investigated it. As there were some complaints about the investigation by Mallish, the Deputy Superintendent of Police, Udipi (P.W.18) himself took up the investigation and after completing the investigation he filed the chargesheet against the accused for an offence under Section 409 I.P.C. In the chargesheet the case against the accused is that he, being the trustee, agent of Krishnapur Mutt and in such capacity, on or about 2-8-1939 being entrusted with certain properties to wit pooja with its accessories consisting of three gold sanyasi rings, six gold prabhalas with gold umbrellas, gold matha and Jalari gold [illegible] gold ashtapathi [illegible] for personal chief deity, gold pakke and malasuli for [illegible], gold kariyana, two gold kalasapes, two gold arathis, two gold kattimanes, gold cased kalamarichamma, gold padukas, etc., worth in all about one lakh of rupees, committed criminal breach of trust [illegible] the said properties between [illegible]

said properties between 1939 and 1946.

3. The prosecution examined 19 witnesses before the Additional First Class Magistrate, South Kanara. After examination of the P.Ws the accused was questioned and a charge under Section 409 I.P.C was framed against him. The accused pleaded not guilty to the charge. The P.Ws were further cross-examined by the accused and 15 witnesses were examined for the defence. After the trial was closed and when the case was pending judgment the accused moved the High Court to withdraw the case from the file of the Additional First Class Magistrate, South Kanara to the file of the High Court on the ground that an important question of law relating to the interpretation of the Constitution had to be considered. The High Court ordered the withdrawal of the case to its own file. The question of law relating to the interpretion of the Constitution was considered by their Lordships of the High Court in another case reported in 1958 I. L.J., Page 557 (Sri Shirur Mutt versus the Commissioner, Hindu Religious Endowments Board, Madras. After the question of law had been answered, this case was transferred by the High Court to this court for disposal according to law. As permitted by the Judgment of the High Court the accused recalled P.W.19 and D.Ws. 8 and 15 and further cross-examined and further examined them respectively.

4. The charge framed by the Additional First Class Magistrate, South Kanara runs as follows:-

"I, Solomon Joshua, First Additional First Class Magistrate, South Kanara, hereby charge you Vidyavathna Thirtha Swamiar of the Krishnapur Mutt, Udipi, as follows:-

That you the aforesaid Vidyavathna Thirtha Swamiar being the trustee (agent) of the Sri Kallmardhana Krishna Devaru of the Krishnapur Mutt, Udipi, and in such capacity being entrusted on or about the end of 1939 or beginning of 1940 with the gold ornaments and jewels in silver and gold, etc., costing in all about Rs. 3,00,000/- (Three Lakhs) between 1939 and 1946, committed criminal breach of trust with respect to some of the aforesaid properties, costing in the aggregate about Rs. 1,00,000 (One Lakh) as mentioned in the list attached to this charge and thereby committed an offence punishable

under Section 409 of the Indian Penal Code and within my cognizance and I hereby direct that you be tried before me on the aforesaid charge :

I. Vesta with its accessories, viz., one big gold prabhala with lion face and nine serpenthood with three layered gold umbrella, gold pakkes, gold naimamis, gold matte, six gold prabhales with umbrella three big gold sampushtas, three small sampushtas, gold chamaras, nagasangiga sarna, gold gandustaras, gold mahtapathi mantapa, gold nakshatramala mala, gold padukas with precious stones, gold ornaments with precious stones, sovereign and half sovereign saras, gold jalari.

II. Gold arathis, gold harivanas, gold kalasa, gold kowlies, mouta, two gold kattigenalus, two gold kalubeepas, gold darpanu, gold parrots, gold ornamed right handed halamarishanku, gold padukas.

III. Silver kadapanas, silver plates, silver arathis, silver rangolis, silver kowligas and sootus, silver chambus, silver aarathis, silver sampushtas, silver guindis, silver padukas, etc."

5. On behalf of the accused it is contended that the charge framed is an illegal one and that he cannot be convicted on this charge. This contention of the accused is in my opinion a valid one. The charge framed against the accused is bad in several ways. Section 233 of the Criminal Procedure Code requires that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in Sections 234, 235, 236 and 239. In the present case the accused is charged with having committed breach of trust in respect of several items of property and not money. Section 222 (b) Cr. P.C. will not therefore apply and even assuming that all these breaches of trust took place within one year, it is not feasible to treat the breach of trust of the several items of properties as one offence. The breach of trust in respect of each item of property is a separate offence and a separate charge has to be framed for each of them.

6. The charge is also bad and defective for being very indefinite vague and embarrassing. The list of properties annexed to the charge shows that in the case of most of the items the number has not been mentioned.

that in the case of most of the items of the number has not been specifie the approximate weight of the various items also has not been given. So also the approximate time of the commission each of breach of trust has not been given. The decision reported in I.L.R. 43, Calcutta, page 16, Abinashchandra Sarkhar versus Emperor lays down that since Section 405 of the Indian Penal Code covers dishonest misappropriation, dishonest conversion, dishonest user or disposal in violation of a direction of law or of a legal contract or dishonestly suffering any other person to do it; it is necessary that the charge under Section 408 should indicate which of these several offences was intended and that further the charge should state who made the alleged entrustment or who suffered from the alleged breach of trust. These particulars are also wanting in the charge framed in this case. I am therefore of opinion that the charge as framed is illegal and the accused cannot be convicted on this charge.

7. There is also another important defect in the conduct of the prosecution. As already stated, the investigation of the case was first done by the Circle Inspector of Police, viz., Mr. K.V.Mallaya. The prosecution has strangely not examined Mr. Mallaya. To bring out the contradiction made by some of the P.Ws. the Section 161 statements of the witnesses recorded by Mr. Mallaya have been marked. This procedure of exhibiting the Section 161 Statements is illegal and these exhibits have to be ignored. The consequence is that the accused would be prejudiced and he cannot elicit the contradictions made by the P.Ws in the absence of the examination of Mr. Mallaya by the prosecution.

8. On behalf of the prosecution it is argued that if the charge as framed is bad, the court can suitably alter it under Section 227 Cr.P.C. and that the defect of non-examination of Mr. Mallaya can be removed by now examining him. If the charge is to be altered and new charges are to be framed against the accused, we can only frame at best three charges for criminal breach of trust in respect of three items of properties committed within the period of one year, since otherwise it will offend the provisions of Section 234 (1) Cr. P.C. On behalf of the accused it is pointed out that on the evidence on record no case of breach of trust in respect of any item of property has been made out.

to warrant the framing of any charge against the accused and convict him under it. Further, it is argued that if new charge is framed, it will involve fresh further examination of all witnesses, that practically a de novo trial has to be conducted, that the prosecution in this case is not a bona fide one, that the petition Ex. P.1 was one got up to support the framing of a scheme by the Board, notice of which had been given by the Board already in 1945, that because the accused filed a suit and fought against the scheme framed by the Board in 1946 and later filed an appeal to the High Court, the Board after a lapse of 8½ years filed the complaint Ex. P.18 just to blackmail and silence the accused, that the accused has been sufficiently harassed and that justice does not require that he should be further persecuted by the court altering the charge and framing new charges and making the accused to stand a de novo trial.

9. Before discussing the evidence on the prosecution side, it is necessary to state what are the points which the prosecution has to prove to sustain a charge of criminal breach of trust under Section 409 I.P.C. against the accused. Firstly the prosecution has to establish that there was an entrustment of property to the accused and that the entrustment to him was in his capacity as a trustee: secondly, the prosecution has to prove that there was either a misappropriation of property, conversion for his own use, use or disposal in violation of a legal direction of law or any legal contract made thirdly, that the misappropriation or conversion or disposal was with a dishonest intention.

10. In the case reported in 1958 I M.L.J., page 867 (Shirur Mutt versus the Commissioner, Hindu Religious Endowments Board, Madras, the position of the Head of a Mutt with relation to the properties of the Mutt has been clearly laid down. It has been held therein that the head of a mutt is not a trustee in the sense that word is used in the Law of Trust and his position cannot be brought under any legal label known to English jurisprudence, that it is only if it is established that any specific property has been vested as a trustee in the name of the mutt that he becomes a trustee to that extent and in respect of that property and that in respect of the properties not so specifically vested as trustee he has the beneficial ownership, and he is not liable to account for their income, much less to be

circumstances. So in the present case it is necessary for the prosecution to prove not only that the articles in respect of which the accused is charged belonged to the mutt but that these articles were are specific articles vested in the head of the mutt as trustee. If the articles as proved to be only the ordinary property of the mutt, it would follow that to some extent the accused had a beneficial ownership in them. In 60 Calcutta Page 1316 (Bhupendranath Sangha versus Girishchalal Nagar), which was a case of alleged criminal breach of trust by a partner of partnership property, it has been held by Their Lordships that each partner being a co-owner of the whole of the common stock of the partnership, it is difficult to conceive how a partner can be entrusted with or dominion over his own property and how he could dishonestly misappropriate it or convert it to his own use. Likewise, I should think that it is impossible to conceive how the accused who has got beneficial ownership of the property of the mutt can be entrusted with and how he could dishonestly misappropriate his own properties. It is rather a difficult and impossible job for the prosecution to prove that any of the articles in question was specifically vested in the head of the mutt as trustee and the prosecution has not attempted to prove it.

11. Even assuming that the articles in question are properties specifically vested in the mutt as trustee, the prosecution has to prove that when the accused entered management of the mutt at the end of 1939 or the beginning of 1940 from the previous manager Nanchar, these articles were either entrusted or handed over to the accused. The only direct evidence regarding the handing over or the entrustment by Nanchar to the accused is that of [illegible] (P.W.5). P.W.5 is the manager of the Sodal Mutt, which is one of the other mutts in Udipi. P.W.5 would say in his evidence that at the time of handing over charge or management by Nanchar to the accused about the end of 1939 or in the beginning of 1940, Nanchar sent for him to witness the handing over of the properties and he went, that one late Venkoba Achar, the then Agent of the Adamar Mutt was also present, that in the presence of these two and some others the jewellery of the mutt was were checked with reference to the register and handed over to the accused and that among the jewellery handed over were the gold peetah and all its accessories excepting the gold mantapam, two kuthigekolus,

two gold covered chamaras, Gold Kavuligai kavuth, two gold guimals, two gold plates and a number of gold padakes and chains.

14. On behalf of the accused it is argued that the evidence of P.W.5 cannot be relied upon. One Sripathi Achar is the interim trustee of the Sadal Mutt and P.W.5 is the Manager of that mutt under him. This Sripathi Achar is the brother-in-law of Sri Arur Lakshminarayana Rao. It is clear from the evidence in this case that Sri Arur Lakshminarayana Rao from the very beginning has been working against the accused and that he is taking an active interest in this case. P.W.5 can therefore be easily got at by Sri Arur Lakshminarayana Rao and made to give evidence. Further it would also appear that P.W. 5 has got some grievance against the accused. The accused in his statement has stated that about 3 or 4 years ago he was invited by P.W.5 to the Ramaya Innanga High School, of which P.W.5 is the Manager, that when the accused visited the school P.W.5 requested him to give a donation to the school, that the accused however did not comply with the request and that as such P.W.5 has got ill-feeling against the accused. P.W.5 in his evidence would admit that he invited the accused to his school but he would deny that he requested the accused to give any donation to the school. There is a gold palanquin belonging to the Krishna Temple which is in the custody and possession of the Krishnapur Mutt. The Pariyayam Swamiars acquisition this palanquin on important occasions by means of a letter addressed to the Manager of the Krishnapur Mutt. Sadal Mutt was in Pariyayam from 1946--50. P.W.5 as Manager of Sadal Mutt sent a letter to the accused requisitioning the palanquin. The accused then insisted that the requisition should come from the interim trustee himself and he refused to give the palanquin on the letter of P.W.5. The interim trustee ultimately had to write Ex.D.1 himself and get the palanquin. P.W.5 would have felt that he was slighted by the accused and he would have a grievance against the accused on this ground also.

15. P.W.5 has stated in his evidence that Ramachar told him as well as Lala Venkatachar (the then Agent of Adamr Mutt) that it was to avoid any public talk at a future date that he took the precaution of handing over charge in the presence of two of the mutt agents, namely P.W.5 and

Venkobachar. If Dasachar were such a careful man, it is surprising that he did not take a voucher attested by P.W.5 and Venkobachar from the accused for having received the jewels. P.W.5 would say that no such acknowledgment was taken by Dasachar from the accused. As already stated, there is a gold palanquin belonging to Krishna ur Mutt, which is in the custody of the accused mutt. When the other jewels and valuable articles were handed over, it is only natural that such an important articles as the palanquin would have been handed over and it would not have been omitted. P.W.5 would say that the palanquin was not handed over and that he did not witness the entrustment of the same [illegible]. Again, though P.W.5 would now say in his evidence that late Venkobachar was invited and he was also present to witness the entrustment. P.W.5 did not tell the Deputy Superintendent of Police (P.W.19) about the presence of Venkobachar. P.W.5 would say in his evidence that he did not remain till the entrustment of all the properties were over and that he came away in the middle when the handing over of gold articles had been completed and the handing over of the silver articles had just commenced. It is unlikely that a man who was specially called to witness the entrustment would have gone away in the middle. As already stated, in the first instance the investigation was made by the Circle Inspector Mallish. P.W.5 was not examined by Mallish and P.W. 5 was but so for the first time before the Deputy Superintendent of Police (P.W.19) when he took up the investigation. Further, when the Deputy Superintendent of Police (P.W.19) first examined P.W.5 he did not mention about his witnessing the entrustment of the jewels by Dasachar to the accused. The Deputy Superintendent of Police again examined P.W.5 after 3 or 4 months and it was only then that P.W.5 mentioned about his witnessing the entrustment. P.W.5 is a person who has no compunction to tell lies. In his cross-examination he was asked whether the lands of the feudal mutt of which he is the Manager had not been given on Mulgeni tenure to the wife of the intended trustee, daughter of Arur Lakshminarayana Rao and others, he had the courage to say that he is not aware of any such lands. The lease of these lands is evidence by the documents Exs. D.39. 40. 41 and 42.

14. Dasachar is the best person to speak about the entrustment of the articles made by him to the accused. P.W.10 in his evidence has admitted that he questioned Dasachar. Dasachar, was, however, not cited as a witness in the chargesheet and he has not been examined. It can be inferred that Dasachar's evidence would not support the prosecution case about the entrustment. In view of all these circumstances the evidence of P.W.5 about the entrustment cannot be relied upon and if his evidence goes, there is no other direct evidence about the entrustment of any article to the accused when he assumed management from Dasachar.

15. The prosecution has also sought to prove the entrustment by circumstantial evidence given by P.Ws. 1, 3, 4, 6, 7, 8, 9 and 10. The evidence of these witnesses is to the effect that after the accused took over management from of the matt from Dasachar they have seen the various articles mentioned in the chargesheet either in the matt or in the Krishna temple during the Pariyayam period of the accused. P.Ws. 1, 3, 4 and 6 are ex-servants of the accused matt. P.W.7 is the Junior Swamiyar of Puthigai Matt. P.Ws. 8 and 9 are the Inspectors of the Endowment Board. All these witnesses say that during the Pariyayam period of the accused, on Rajagopuri and other festive occasions they have seen the gold peetah with its accessories displayed in the Krishna Temple. As regards the accessories of the peetah there is no uniformity in the evidence of the witnesses. So also as regards the other articles there are discrepancies in the evidence of these witnesses. The question is now far the evidence of these witnesses given out of their memory of what they saw some 6 or 7 years ago can be relied upon. One can understand the witnesses observing an article like the gold peetah and their being able to remember it after the lapse of all these years. But it is difficult to believe that these witnesses would have mentally observed and they would be able now to remember the several articles or accessories placed on the three different layers of the peetah. It is possible that imagination has played its part and helped the witnesses to give the details of the various accessories of the peetam, which they saw 6 or 7 years ago.

16. P.W.1 joined the services of the Matt as only in 1968 and that

too as a clerk. Before that he would have gone to the matt as a boy to eat and he cannot have any knowledge of the matt or its properties. After joining the services of the Matt also he would not have had much opportunity to know intimately the various articles in question since as clerk he had not to handle the articles. P.W. 1 lives in a property belonging to the Sodai Matt, of which Sri Arur Lakshminarayana Rao, the brother-in-law of Sripathi Achar/is already stated, the interi is. trustee. P.W. 1 has admitted that he/had to leave the service of the matt because the accused refused his request for enhanced pay and P.W.1 has therefore reason to be disgruntled with the accused. P.W.1 is one of the witnesses, who has been examined by the prosecution witnesses- to prove how the accused misappropriated the jewels of the matt. Later, when discussing the evidence regarding misappropriation, I will show that P.W.1 is a totally unreliable person. ~~xhix~~ For all these reasons P.W.1's evidence regarding his seeing most of the articles in the matt cannot be relied upon.

17. P.W.3 has worked in the matt of the accused during the period prior to the accused taking over the management from Damodhar. Subsequently he worked for sometime in the Puthigai Matt. It was when working in the Puthigai Matt that he was questioned by the Circle Inspector and the Deputy Superintendent of Police. P.W.7 is the Junior Swamiyar Puthigai Matt who has got a Power of Attorney for management from the Senior Swamiyar. Though a power of attorney has been given to P.W.7 it is really Arur Lakshminarayana Rao and Damodhar who have got real control over the management of Puthigai Matt. Ex. D.80 is the Power of Attorney given by the Senior Swamiyar of the matt to the Junior Swamiyar, P.W.7. The Power of Attorney shows that P.W.7 has to place the accounts for inspection before Sri Arur Lakshminarayana Rao and Damodhar and that the Power of Attorney can be terminated at any time by the joint notice from the aforesaid two persons. P.W.3, when working in the Puthigai Matt could easily be made by Arur Lakshminarayana Rao to give evidence against the accused before the Circle Inspector and the Deputy Superintendent of Police.

18. P.W.4 was working for the accused as a cook from 1940 to 194

P.W.4 also says that he had to leave the ...

P.W.4 also says that he had to leave the services of the accused Swamiyar because he declined to raise his salary and he has also reason to be disgruntled. As in the case of P.W.1 I will show later when discussing the evidence of actual misappropriation that this witness also is capable of lying. So his evidence about having seen such and such articles in the mutt cannot be relied upon.

14. P.W.6 is one of the signatories of Ex. P.1, the complaint sent to the Board. He has admitted that he signed Ex. P.1 without knowing its contents. Ex. P. 1 contains a list of the jewels alleged to have been misappropriated by the accused and the list contains even the mundagam which admittedly has not been misappropriated by the accused. P.W.6 admits that there was dispute between the accused and his family as regards the hereditary right of the family of P.W.6 to the archakaship of one of the branch mutts of the accused and that there was an exchange of registered notices between P.W.6 and the accused. He also admits that the accused filed a suit and got the cousin of P.W.6 evicted from the mutt property, that in the suit his cousin claimed a set off of rent and that his contentions were not upheld. Surely he must be ill-disposed towards the accused and his evidence also cannot be relied upon.

15. P.W.7, as already stated, is the Junior Swamiar of Pathigai Mutt, who has got a Power of Attorney from the Senior Swamiyar, which power can at any moment be terminated by Arur Lakshminarayana Row and Ramachar. P.W.7 is evidently under the thumb of Arur Lakshminarayana Row and Ramachar and his evidence cannot be safely relied upon.

16. P.Ws. 8 and 9, being the officers of the Endowment Board, their evidence is not quite disinterested. The Deputy Superintendent of Police during the course of his investigation wanted to examine P.W.6 and so he wrote a letter to the Secretary, Hindu Religious Endowments Board to send P.W.6 to appear before him. Ex. D.44 dated 12-1-50 is the reply received by the Deputy Superintendent of Police to his letter. Ex. D.44 would show that P.W.6 was then candid enough to say that after a lapse of 6 years he was not in a position to say which jewels of the Mutt were missing. It cannot be that six months later when he gave evidence his memory power would have revived. It is clear that subsequent

pressure was had been put on him and that it is at the instance of the Board he has given evidence. As in the case of P.W.6, P.W.9 also cannot be expected to remember after a lapse of 6 years all the jewels of the mutt and his evidence must have been procured by the Board. It is therefore difficult for us to believe P.Ws. 8 and 9, when they pretend to remember and they enumerate from their memory the various items of the accessories of the peetah, which they saw during their visits to the Krishna Temple several years ago.

22. P.W.10 is another witness who in 1944 during Navarathiri saw the peetah and its accessories. The occasion for his going there is to take three advocates alleged to have been invited by the accused Swamiyar for Navarathiri. Ex. D.16 shows that one of the advocates alleged to have been invited and taken by P.W.10 for 1944 Navarathiri was dead even in 1943. So the evidence of P.W.10 that in 1944 Navarathiri he had been to Surathal and that there he saw the peetah cannot be relied upon.

23. The documentary evidence on the prosecution side itself shows that Dasachar, who was managing the mutt affairs during the period of the previous Swamiyar had sold a peetah even in 1934. There is no reliable evidence to show that besides the one sold the accused mutt had another gold peetah. The evidence of P.W.6 that the accused mutt had a gold peetah cannot be relied upon. The only peetah which the mutt had having been sold away by Dasachar in 1934, the evidence of P.Ws that they saw the gold peetah in 1942 and 1943 during the Pariyayam period of the accused can be only false. On the whole, the prosecution evidence be---direct and circumstantial--regarding the entrustment of any of the articles in question is not reliable and it cannot be safely acted upon.

24. Assuming that the Prosecution has proved the entrustment, the point next to be considered is whether the prosecution has succeeded in proving that any of the articles so entrusted has been misappropriated by the accused. To prove such misappropriation, there must be evidence of some kind of conversion, i.e., a wrongful diversion to his own purposes or a purpose not consistent with law or contract

or in other words dishonest retual user of the articles by the accused in violation of a direction of a law or contract. The mere fact th the accused has retained the articles or that he has failed to accou for the articles with which he was entrusted is not sufficient to establish that he committed the offence of Criminal breach of trust- see the decision reported in Rex versus Krishnan (A.I.R. 1940, Madras Page 289). In the present case except as regards one sovereignsala, Kundusarna, gold bangles and two Kaludeepas, no evidence has been adduced on the prosecution side to show that the accused had either sold or otherwise converted the articles in question to his own use. As regards the sovereign mala there is the evidence of P.W.1 that the accused got the sovereignsala melted and got made a gold belt through one Krishna Sait, that he gifted the gold belt to one Appi alias Lilly alias Vilasa Kumari whom he was keeping as a concubine and that the accused distributed the remaining sovereigns between his two sisters. The evidence of P.W.1 that the accused was keeping Appi as concubine is corroborated by P.W.4. According to the evidence of P.W.1 the accused was keeping the concubine in the mutt itself. It is too much to think that even if the accused was dealing in that way, he would have been so foolishly bold to keep the concubine openly in the mutt itself. When examined by the Circle Inspector, P.W.1 did not mention a word about Appi. So the evidence of P.Ws. 1 and 4 that the accused was keeping Appi as a concubine can be only false. When examined by the Circle Inspector who first investigated the case, P.W.1 did not mention that a gold belt was got made by the accused through Krishna Sait and presented to Appi. Krishna Sait who is alleged to have made the gold belt has not been examined. In the examination in chief P.W.1 said that the melting of the gold sovereigns also was done by Krishna Sait but in cross-examination P.W.1 says that sovereignsala was got melted through one Lakshmana Asari and it was only the gold ingot that was given to Krishna Sait for making the belt. P.W.1 would say that P.W.4 saw the handing over of the gold ingot by the accused to Krishna Sait for making the belt. P.W.4 does not speak about it in his evidence. P.W.1 says that one Vittal Bhat and Varadaya saw the gift of the belt by the accused to Appi. Both Vittal Bhat

and Vasudeva Rao have not been examined. It is difficult to believe that the present of the gold belt to his consultine would have been so openly made by the accused, that persons like P.W.1 and others could witness it. P.W.1 says that besides himself, P.W.4 and 6 others saw the giving of the sovereigns by the accused to his sisters. P.W.4, however, does not say in his evidence that he saw this. The two others alleged to have seen the gift of the sovereigns by the accused have not been examined. So the evidence of P.W. 1 about the melting of the sovereignsals and the gift of the gold belt by the accused to his consultine and also his evidence regarding the gift of the sovereigns is out of the sovereignsalf to his sisters cannot be believed.

PW. P.W.2 is one Sankara Asari, who is alleged to have melted a gold Gundusara and a pair of gold bangles for the accused. The evidence of P.W.2 is sought to be corroborated by P.W.4, but P.W.4 would say that not one gundusara and one pair of bangles but one pair of gundusaras and 4 pairs of bangles were got melted by the accused through P.W.2. The evidence of P.W.2 shows that he is not at all a respectable witness. Further, he has got a reason to be aggrieved against the accused, because was evicted by the accused from the house in which he was living. Even assuming that the accused got some gundusaras and bangles melted, there is no evidence as to what the accused did with the gold ingot. In the absence of any evidence to show that he made a dishonest user of the gold ingot for himself, he cannot be said to have committed misappropriation in respect of the gundusara and bangles.

PW. P.W.4 would say in his evidence that the accused got melted two kaludesapes by one Ehujanga Asari. Ehujanga Asari has been examined as D.W.1 and he has denied that he melted any gold article for the accused. The evidence of D.W. 2 would go to show that he was being pressed to give evidence against the accused, that since he refused, Asur Lakshminarayana Rao's man who is the Executive Officer appointed by the Court for the accused mutt under the Scheme, was threatening him and that D.W.2 had to send a petition Ex. D.14 to the District Superintendent of Police. The evidence of P.W.4 about the melting of gold kalaleepas cannot also be relied upon. Further there is no evidence that after the melting of the

Maintenance the accused in any way made any dishonest user of the gold ingot.

27. P.Ws. 15 and 16 have given evidence that in March 1940 the accused has purchased a house in Bangalore in the name of his father for Rs. 20,000/-. The prosecution relies upon this as a piece of circumstantial evidence to show that the accused must have misappropriated the jewels of the mutt. P.W.15 is a subsequent tenant of the mutt of the accused under a lease granted by the previous Swamiar. He can be made to give evidence by Sri Arur Lakshminarayana Rao, whose son is the Executive Officer of the mutt. P.W.16 is a common scribe and is not a respectable witness. Their evidence cannot be preferred to that of D.W.4, who is a respectable person and who has given evidence that the purchase was made by the father of the accused and not the accused. Even assuming that the purchase was made by the accused, it is impossible to infer that the money for the purchase was got by sale of misappropriated jewels of the mutt, in the absence of any evidence on the prosecution side about the sale of any jewels of the mutt by the accused.

28. Thus, there is no reliable evidence on the prosecution side to show that the accused has either disposed of or converted to his own use any of the articles of the Mutt.

29. Thus on a consideration of the entire prosecution evidence I find that even if the present charge is to be altered, there is not a single item of property in respect of which a new charge can be framed and the accused convicted.

30. In the result I find the accused not guilty under the charge framed and I acquit him.

(Dictated to the Stenographer, transcribed by him, corrected by me and pronounced in open court this thirtyfirst day of October 1952)

(Sd) Rama Varma,

District Magistrate.

Calendar Case No. 481/32.

List of witnesses for the Prosecution.

1. Krishnaraj Thanthiri
2. Shankaracher
3. Gopalachar
4. [illegible]
5. Srinivasa Kidhanthaya
6. Venkatesh acher
7. Sujanandathirtha Sripathangal
8. Sri [illegible] Rao, B.A.,
9. Sri V.Padmanabha Nambuthiri.
10. Sri G. [illegible] Rao.
11. Sri Nagesa Kamath.
12. Sri Vasava Bhatt.
13. Narasimha Naika Nayak.
14. [illegible]
15. K.V.Naba Rao Patail. Patel
16. [illegible]
17. A.S.S.Prabhu, S.I., Gulba.
18. K.Subba Rao, Sub-Inspector R.
19. N.Gopalan, Dy. S.P., Udipi.
20. Sri Thoni Lakshminara[illegible] Rao.
21. K.Kora Kutti, S.I., of Police.

List of witnesses examined for the Defence.

1. Muthabattu Narasappayya.
2. Thujanga Acharya.
3. P.V.Venkat Hegde.
4. K.Ananda Rao.
5. Shanta Rama Rao.
6. Lakshminarayana Bhat.
7. Dr. P.C.Acher.
8. Purusaja Kanthiri.
9. Gopalakrishna Acharya.
10. K.Padmanabha Acharya.
11. Sri Pejavar Math Samiyar.
12. Ramanath Kudwa
13. Vasudevarayya
14. Sri Kirur Kutt Swamiyar.
15. Sri Govinda Rao.

Exhibits marked for prosecution.

P.1	dated	13-10-45.	Petition filed by P.W.6 and others to the President, H.R.E.Board, Madras.
P.1(a)	"		Signature of [illegible] on P.1.
P.2	"	11-2-47.	Statement of P.W. 6 recorded by the Inspector, H.R.E.Board, Madras.
P.3	"	25-1-46	Copy of monthly engaging run by Rajagopalachari
P.3 (a)	"		Photo in Ex. P.3.
P.4	"	18-1-43	Slip Ex. P.3 engaging.
P.4 (a)	"		Photo of acquaint in Ex.P.4.
P.5	"	16-12-43	Receipt. (Vide Ex. P.4).
P.5 (a)	"		Photo of Exhibit Ex. P.5.
P. 6	"	1.6.46	Inventory showing the articles in the custody of the accused.
P.7.	"	"	Inspection Notes of the Commissioner, regarding Krishnapur Mutt.
P. 8	"	6-12-46	H.R.E.Board's memo to Commissioner on Ex. P.7.
P.9	"	31-8-47.	Report of the Inspector regarding the correctness of Ex. P. 6, etc.
P.10	"	4-10-45	Register of Properties of Krishnapur Mutt.
P.10 (a)	"	27-7-45	Copy of the list under Section 28 of the Act.
P.11	"	5-9-46	Office copy of the direction given to the Accused by Assistant Commissioner.
P.12	"	5.2-46	Reminder sent to the accused by A.C.
P.13	"	17-5-47	Office copy of another reminder sent to accused.
P.14	"	31-12-45	Report of A.C to the Secretary, H.R.E.Board, Madras.

List of Exhibits for prosecution (continued).

P. 15	dated	6-6-49	Complaint of Secretary against the accused to the D.S.P.
P. 16	"	9-1-48	District Court Judgment in L.C.No.1/47.
P. 17	"		1943 Inventory of articles of Krishnapur Mutt (Copy of Ex. P. 6)
P.17 (a)	"	22-4-43	Endorsement of Assistant Commissioner
P.18	"	18-5-43	Board's memo to the Inspector, R.C.Board
P. 19	"	25-1-44	Reply of Inspector to Ex.P.18.
P. 20	"	7-2-39	True extract from Loan Register L.No.170/3
P. 21	"	16-6-39	True copy of an authorisation from Dasachar.
P.22	"	20-2-47	True extract from the Ledger of L.No.9Ex 48 of 48.
P.23	"	22-6-38	True extract of the Loan Ledger relating to L.No. 710/36
P.24	"	7-10-37	True extract from the Loan Register regarding L.No. 636/37
P.24(a)	"	"	Copy of Vadast describing Jewels pledged under Ex. P. 24.
P.25	"	27-4-37 3-7-40	Extract from the Loan Register regarding L.No. 180/40.
P.25 (a)	"	3-7-40.	Extract from the Loanbeginner regarding L.No. 127/40.
P.26 (b)	"	3-7-40	Do. regarding L.No. 128/40.
P.25 (c)	"	"	Do. L.No. 129/40.
P.26.	"	15-6-33	Extract from the Loan Register regarding Loan No. 501/33.
P.27	"	14-11-40	Certified copy of the village 10 (1) register of S.No. 2 Mukkattur Pudukkad village.
P.28	"	27-12-40	Counterfoil receipt book maintained by the accused.
P.29	"	27-6-1668	Registered mulgami chit executed by a tenant in favour of the Krishnapur Mutt
P.30	"	28-1-38	Extract from the Loan Register of Chenai Tyark Bank regarding the loan obtained through Dasachar.
P.30(a)	"	6-11-28	True extract of the Loan Register L.No. 323/28
P.30 (b)	"	7-11-31	Do. do. L.No. 873/31.
P.30(c)	"	Do.	Do. L.No. 874/31
P.30(d)	"	8-4-38	Do. L.No. 89/38.
P.30(e)	"	13-12-38	Do. L.No. 867/38
P.31	"	31-5-46	Letter of Commissioner, H.R.E.Board, Bangalore to H.R.E.Board, Madras.
P.32	"	30-6-46	Do.
P.33	"	22-3-46	Registration copy of the sale deed executed by K.Venkataramaniah, Document No.747/46
P.34	"	5-10-37	Bank Extract from the Jewel Register of the Kannara Banking Corporation in respect of L.No. 636/37.
P. 35	"	23-11-40	Letter of authority to redeem the debt covered by L.No. 128/40.
P.36	"	4-8-41	Do. for L.No. 127/40.
P.37	"	5-1-43	Do. for L.No. 128/40.
P.38	"	5-5-43	Do. for L.No.129/40.
P.39	"	9-10-42	Vadast for the seizure of articles mentioned in Ex. P. 10 (a).
P. 40	"	4-10.49	Vadast for the seizure of brass and copper vessels of Krishnapur Mutt, Udipi, produced by the Manager.
P.41	"	"	Vadast for seizure of brass and copper vessels of Krishnapur Mutt, Sunrakal produced by accused.
P.41(a)		"	Endorsement of the above items to Patel.

List of Exhibits for prosecution (continued).

P.42	dated 6-10-49.	Mahazar for the seizure of M.Os. 1 to 10 drawn up by I.W.19.
P.43	" A.D.--51	Account Book of Krishnapur Mutt for the years 1950--51.
P.43(a)		Account Book of Krishnapur Mutt for the year 1951--52.
P.43 (a) (1)	30-11-51	Entries made by Shanbogue (deceased) Pejavar Rama Rao, regarding the payment of certain charges relating to the Mutt in ex. P. 43 (a).
P.43 (a) (2)	11-12-51	
P.43 (a) (3)	17-12-51	
P.43 (a) (4)	4-2-52	
P.43 (a) (5)	11-4-52	
P.43 (a) (6)	16-4-52	
P.43 (a) (7)	27-7-52	
P.43 (a) (8)	31-7-52	
P.43 (a) (9)	8-8-52	
P.43 (a) (10)	14-8-52	
P.43(a) (11)	16-8-52	
P.43 (a) (12)	Do.	
P.43 (b)	1952--53	Account book of the Krishnapur Mutt for year 1952--53.
P.43 (b) (1)	13-12-52	Entries made in Ex. P. 43 (b) by
P.43 (b) (2)	13-6-53	Padmanabha Bhatta, Ex. Shanbogue of Krishnapur Mutt.
P.43 (c)	1953--54.	Account book of Krishnapur Mutt for the year 1953-54.
P.43 (c) (1)	21-11-53	
P.43 (c) (2)	20-2-54	Entries made in Ex.P.43 (c) by
P.43 (c) (3)	10-3-54	Padmanabha Bhatta, Ex-Shanbogue of
P.43 (c) (4)	13-10-54	Krishnapur Mutt.
P.43 (d)	1937--38.	Account book of Krishnapur Mutt for the year 1937--38.
P.43 (e)	1938--39	Account Book of Krishnapur Mutt for the year 1938--39.
P.43(e) (1)	5-1-39.	Entries made in ex.P. 43 (e) by
P.43 (e) (2)	7-2-39	Padmanabha Bhatta, Ex-Shanbogue of
P.43(e) (3)	4-11-39	Krishnapur Mutt.
P.44	dated 20-12-49.	Search list for the seizure of Ex.P.43 and Ex.P. 43 (a) to P.43 (e).
P. 45	"	List showing the description of the account books seized.
P. 46	17-2- 50.	Duplicate of the same to the accused.
P.46(a)	16-2-50.	Acknowledgment of the accused.
P.47.	17-2-50	Memo filed by the prosecution for
		expunging the remaining account books from the accused.
P.48	dated 29-7-49.	Warrant for the seizure of accused M.O s 1 to 10 drawn by P.W.21.
P.49	" 21-4-50.	Judgment in O.S.No. 96/49.

Exhibits marked for Defence.

Ex. D.1	dated 11-5-48.	Letter of P.W.5 to accused.
D.2	" 24-9-49	Statement of P.W. 2 recorded by P.W.19
D.2(a)	"	Contradictory portion marked in Ex. D.2.
D.3	" 31-7-49.	Statement of P.W.3 recorded by C.I. Gulpi.
D.3(a) to 3 (c)		Contradictory portion marked in Ex.D.3
D.4.	" 27-7-49.	Statement of P.W.4 recorded by C.I. Gulpi.
D.4(a)to 4(c)		Contradictory portion marked in Ex.D.4

EXHIBITS marked for the Defence (Continued).

D.5 dated 12-8-1949.			Statement of P.W.1 recorded by P.S.Ry.
D.5(a)	"		Contradictory portion of Ex. D.5.
D.6	"	9-9-47.	Registered notice to the accused by the counsel for P.W.7.
D.7	"	18-10-47	True copy of the reply sent to P.W.7 on Ex.D.6.
D.8	"	20-10-47	Invitation given to accused by the Vaikal Junior Varier for Ankathe Daspa.
D.9	"		Another invitation from the Junior Chemlyan of Puthigai Kutt to accused for Pariyayam Pooja.
D.10	"		Another invitation from Puthigai Junior Chemlyan to accused for Pakara Chilavazhcha.
D.11.	"	3-7-44	Letter from the Junior Chemlyan of Puthigai Kutt to the Prabhakaran of Kuppad.
D.12	"	4-11-48	Letter purported to have been written by Senior Puthigai Chemlyan to accused.
D.13	"	11-11-21.	Lease deed executed by P.W.10 in favour of Krishnapuram Kutt.
D.14	"	11-10-49	Copy of petition to H.S.P.
D.14(a)			Postal receipt for Ex. D.14.
D.14(b)			Acknowledgment from H.S.P.'s Office for Ex. D.14.
D.15	"	30-1-28	Audit report from 1-11-34 to 3-11-37.
D.16	"	2-10-38	Commissioner's letter
D.17	"	16-4-42	Copy of report by P.W.5.
D.17(a)			Plan.
D.17(b)			Portion.
D.18	"	23-6-51	Death Register Extract.
D.19	"	21-3-50	General Power of Attorney.
D.20	"	1-6-42	Do.
D.21	"	11-1-44	
D.22	"	28-10-44	
D.23	"	15-5-45	Invitation.
D.24	"	15-5-45	
D.25			
D.27.			Pay Book of Krishnanpur Kutt for 1946—50
D.27(a)	"		Entry dated 5-11-49 in Ex. D.27.
D.28	"	28-3-45	Explained Notice
D.29	"	30-6-50	Petition of Counsel served on the accused
D.30	"	6-7-51.	Order of the H.R.E.Board.
D.31	"	15-6-51.	Receipt of Kanyar Dancer.
D.32	"	14-7-51	Notice of Assistant Commissioner, H.R.E. Board.
D.33	"	15-5-42	Entered in O.S.No. 1/47.
D.34	"	12-4-38	Registration copy of Power of Attorney.
D.35	"	28-7-39	Birth Extract of accused.
D.36	"	3-3-46	Decree in Regent suits.
D.37	"	5-8-49	
D.38	"	30-1-47.	Judgment.
D.39	"	15-3-48	Registration of Puligani Chit in favour of wife of P. Aroor.
D.40	"	15-3-48	Puligani Chit.
D.41	"	15-3-48	Do.
D.42	"	15-3-48.	Do.
D.43	"	23-5-44	Army order submitting etc.

Exhibits for the Defence (Continued).

Ex. D.44 dated 18-1-50.		Letter of Secretary, H.R.E.Board, Madras to Deputy Superintendent o Police, Udipi.
Ex. D.45.		Jewel Register.
Ex. D.46		1940 Rough Day Book of Krishnapur Mutt.
Ex. D.46 (a)	"	28-10-40. Initial by Dasachar.
D.46 (b)	"	30-10-40. Handwriting of Dasachar.
Ex. D. 47	"	8-8-51. True copy of Judgment of High Court in A.S.No. 132/1949

Material Objects.

M.Os. 1 to 12.	Silver Articles of the Mutt.
M.O. 13	Silver Kodappana
M.O. 14	Parts of Silver Kantapa
M.O. 15)	Silver plates.
M.O. 16 (	
M.O. 17.	Sampushta.
M.O. 18.	Arathi.
M.O. 19 (	Silver Spoons.
19 (a))	
19 (b) (	

(sd) R.V.

D.M.

/True copy/

Sheristadar
District Magistrate Court
Coimbatore

To
The Sessions Judge Coimbatore
Copy to the Collector Coimbatore
(2 copies)

C A L E N D A R C A S E NO. 421 O F 1952

J U D G M E N T
****

The accused in this case was charges eetel by the Deputy Superintendent of Police, Udipi, before the Additional First Class Magistrate, Mangalore for having committed an offence under section 409 I.P.C.,

2. The accused is the Swamiyar of Krishnapur Mutt, which is one of the eight mutts in Udupi established by Sri Madhwacharya. The previous Swamiyar of Krishnapur Mutt attained Samathi in 1935 without nominating his successor. So the Swamiyar of Puthigal Mutt, which a twin mutt of Krishnapur Mutt, ordained the accused as Swamiyar when he was a minor in 1935. One Dasachar was managing the affairs of the Krishnapur Mutt even during the period of the previous Swamiyar. On account of the minority of the accused Swamiyar, Dasachar was allowed to continue the management of the mutt during the minority of the accused. In 1937, the accused along with his father went to Benares for purposes of studies and he returned to Udupi in 1939. The accused attained majority in 1939. In the end of June 1939 or the beginning of 1940 the accused took over the management from Dasachar and thereafter he himself was managing the affairs of the mutt. There is no Matathipathi for the Sri Krishna Mutt in Udupi. But the Swamiyar of each of the 8 mutts in turn presides over the temple of Sri Krishna every two years in every 16 years. At every change of Swamiyar at the end of two years a festival known as Pariyayam is celebrated on a very grand scale. The turn of the Krishnapur Mutt came in January 1942 and the accused was the Pariyayam Swamiyar of the Krishna Mutt or Temple from January 1942 to January 1944. The succeeding two years was the turn of the Puthigal Mutt. Under section 38 of the Madras Hindu Religious and Charitable Endowments Act every mutt has to maintain a register of jewels and moveables of the mutt in the prescribed form. Every year a return of the moveables has to be sent to the Endowment Board. The accused was not sending the list of jewels and moveables to the Board and the Board was asking the accused for submission of the same. In 1943 the accused for the first time sent a list (Ex. P.17, of jewels and moveables. In 1945 he sent another list (Ex.P.18) and in 1951 he sent a list (Ex.P6). The Board was not satisfied with the list

submitted by the accused and so the Board was asking the accused to send the return in the form prescribed under section 38 of the Act. The accused, however did not do it. In August 1946 the Commissioner I of the Endowments Board inspected the mutt of the accused. The Commissioner then received some representations that the accused Swamiyar had of late been mishandling the jewels and even disposing of them (see Ex.P7 the inspection notes of the Commissioner) On 26.10.1946 the Board received from a petition signed by one Hanumanthachar (P.W.6) and 9 others complaining about the mismanagement of the mutt properties by the accused Swamiyar and inter alia stating that the accused Swamiyar had sold most of the valuables of the mutt worth about Rs.3 lakhs as detailed in the list attached to the petition. The Board directed the Assistant Commissioner Mangalore to make enquiries on the petition (Ex.P.1). After receipt of the report of his Inspector, the Board sent a complaint Ex. .15. along with a copy of the petition Ex.P.1 to the District Superintendent of Police, Mangalore for investigation. The complaint was forwarded by the Dt.Superintendent of Police the Deputy Superintendent of Police, Udipi, to the Circle Inspector of police for personal enquiry and report. The Cifcle Inspector of police for Malliah, on receipt of the complaint registered a case under section 406 I.P.C. and investigated it. As there were some complaints about the investigation by Malliah, the Deputy Superintendent of Police, Udipi (P.W.19) himself took up the investigation and after completing the investigation he filed the chargesheet against the accused for an offence under section 409 I.P.C. In the chargesheet the case against the accused is that he, being the trustee agent of Krishnapur Mutt and in such capacity, on or about 9.8.1939 being entrusted with certain properties to sit pesta with its accessories consisting of three gold samphstas, six gold prabhalas with gold umbrellas gold matha and Jalari gold nagasampigas saras, gold ashtapathimantapam for personal chief deity gold prabhalas with gold umbrellas gold pakka and naisani for theertha gold harivana two gold kalasepas two gold arathis two gold kattikalas, gold cases balamurishanka gold padakas etc., wort in all about one lakh of rupees committed criminal breach of trust with respect to the said properties between 1939 and 1946.

3. The prosecution examined 19 witnesses before the additional First Class Magistrate South Kanara. After examination of the P.W.s the accused was questioned a charge under section 409 I.P.C. was framed against him. The accused pleaded not guilty to the charge. The P.W.s were further cross-examined by the accused and 15 witnesses were examined for the defence. After the trial was closed and the case was pending judgment the accused moved the High Court to withdraw the case from the file of the Additional First Class Magistrate, South Kanara to the file of the High Court on the ground that an important question of law relating to the interpretation of the constitution was considered by their Lordships of the High Court in another case reported in 1952, I.L.R.J. page 557, (Sri Shirur Mutt versus the Commissioner Hindu Religious Endowments Board Madras. After the question of law had been answered, according to law. As permitted by the judgment of the High Court the accused recalled P.W.19 and D.W.s 5 and 15 and further cross-examined and further examined them respectively. Court to the Court at Udipi *** This case was transferred by the High

4. The charge framed by the additional First Class Magistrate, South Kanara runs as follows:-

"I, Solomon Joshua, First additional First Class Magistrate, South Kanara, hereby charge you Vidyarathna Thirtha Swamiar of the Krishnapur Mutt, Udipi as follows:-

That you the aforesaid Vidyarathna Thirtha Swamiar being the trustee (agent) of the Sri Kalimanthana Krishna Devaru of the Krishnapur Mutt, Udipi and in such capacity being entrusted on or about the end of 1939 or beginning of 1940 with the mutt ornaments and jewels in silver and gold etc., costing in all about Rs.3,00,000/- (three lakhs) between 1939 and 1946, committed criminal breach of trust with respect to some of the aforesaid properties, costing in the aggregate about Rs.1,00,000 (one lakh) as mentioned in the list attached to this charge and thereby committed an offence punishable

under section 403 of the Indian Penal Code and within my cognizance and I hereby direct that you be tried before me on the aforesaid charge.'

"I. Peeta with its accessories viz., one big gold prabhala with lion face and serpenthood with three layered gold umbrella, gold pakkes, gold naishanis gold matta six gold prabhalas with umbrella, three big gold sampushtas, three small sampushtas gold chamaras, naga 1. sampige saras, gold gundisaras, gold ashtapathi mantapa, gold naksha -kshamala, gold palakas with precious stones, gold coronets with precious stones, sovereign and half sovereign saras, gold Jalari.

II. Gold arathis, gold harivanas, gold kalasa, gold kowlige, Soutu, 2. two gold kattigekolus, two gold kaludespas, gold darpana, gold parrot gold uncased righthanded balamurishanka gold padakas.

III. Silver kodapanas silver plates, silver arathis, silver rangala 3. silver kowliges and soutus. silver chembus silver amrathis, silver sa sampushtas, silver gundis, silver padukas etc.'.

5. On behalf of the accused it is contended that the charge framed is an illegal one and that he can ot be convicted on this charge. This contention of the accused is in my opinion a valid one. The charge framed against the accused is bad in several ways. Section 233 of the criminal procedure code requires that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 234, 235, 236 and 239. In the present case the accused is charged with having committed breach of trust in respect of several items of property and not money. Section 222 (b) Cr.P.C. will not therefore apply and even assuming that all these breaches of trust took place within one year, it is not feasible to treat the breach of trust of the several items of properties as one offence. The Breach of trust in respect of each item property is a separate offence and a separate charge has to be framed for each of them.

6. The charge is also bad and defective for being very indefinite vague and embarrassing. The list of properties annexed to the charge ~~sheet~~ that in the case of most of the items the number has not been specified ~~that in the case of most of the items the number has not been specified~~. The approximate weight of the various items also has not been given. So also the approximate time of the commission each breach of trust has not been given. The decision reported in I.L.R. 63, Calcutta, page 16, Abinashchandra Sarkhar versus Emeror lays down that since section 405 of the Indian Penal Code covers dishonest misappropriation, dishonest conversion, dishonest used or disposal in violation of a direction of law or of a legal contract or dishonestly suffering any other person to do it, it is necessary that the charge under section 409 and should indicate which of these several offences was intended and that further the charge should state who made the alleged entrustment or who suffered from the alleged breach of trust. These particulars are also wanting in the charge framed in this case. I am therefore of opinion that the charge as framed is illegal and the accused cannot be convicted on this charge.

7. There is also another important defect in the conduct of the prosecution. As already stated, the investigation of the case was first done by the Circle Inspector of Police viz. Mr.K.V.Mallaya. The prosecution has strangely not examined Mr.Mallaya. To bring out the contradiction made by some of the P.Ws the section 162 statements of the witnesses recorded by Mr.Mallya have been marked. This procedure of exhibiting the section 162 statements is illegal and these exhibits have to be ignored. The consequence is that the accused would be prejudiced and he cannot elicit the contradictions

made by the A.Js in the absence of the examination of Mr.Mallaya by the prosecution.

8. On behalf of the prosecution it is argued that if the charge framed is bad, thecourt can suitably alter it under section 227 Cr.P.C. and that the defect of non-examination of Mr.Mallaya can be removed by now examining him. If the charge is to be altered and new charges are to be framed against the accused we can only frame at best three charges for criminal breach of trust in respect of three items of properties committed within the period of one year, since otherwise it will offend the provisions of section 234 (1) Cr.P.C. On behalf of the accused it is pointed out that on the evidence on record no case of breach of trust in respect of any item of property has been made out so as to warrant the framing of any charge against the accused and conviction him under it. Further, it is argued that if new charge is framed, it will involve further examination of all witnesses, that practically a de novo trial has to be conducted, that the prosecution in this case is not a bona fide one, that the petition Ex.P.1 was one got up to support the framing of a scheme by the Board, notice of which had been given by the Board already in 1945, that because the accused file a suit and fought against the scheme framed by the Board in 1946 and later filed an appeal to the High Court. The Board after a lapse of 2½ years filed the complaint Ex.P.15 just to blackmail and silence the accused, that the accused has been sufficiently harrassed and that justice does not require that he should be further persecuted by the court altering the charge and framing new charges and making the accused to stand a de novo trial.

6.6.49

9. Before discussing the evidence on the prosecution side, it is necessary to state what are the points which the prosecution has to prove to sustain a charge of criminal breach of trust under section 409 I.P.C. against the accused. Firstly the prosecution has to establish that there was an entrustment of property to the accused and that the entrustment to him was in his capacity as a trustee; secondly the prosecution has to prove that there was either a misappropriation of property conversion for his own use, user or disposal in valuation of a legal direction of law or any legal contract, thirdly that the misappropriation or conversion ~~for his own use, user or~~ disposal was with a dishonest intention.

10. In the case reported in 1952 I M.L.J., page 557 (Shirur Mutt versus the Commissioner, Hindu Religious Endowments Board, Madras, the position of the Head of a Mutt with relation to the properties of the mutt has been clearly laid down. It has been held therein that the head of a mutt is not a trustee the sense that word is used in the law of trust and his position cannot be brought under any legal label known to English jurisprudence that it is only if it is established that any specific property has been vested as a trustee in the head of the mutt that he become a trustee to that extent and in respect of that property and that in respect of the properties not so specifically vested as trustee he has the beneficial owner ship and he is not liable to account for their income much less to the pathakarikas. So in the present case it is necessary for the prosecution to prove not only that the articles in respect of which the accused is charged belonged to the mutt but that these articles are specific articles vested in the head of the mutt as trustee. If the articles are proved to be only the ordinary property of the mutt, it would follow that to some extent the accused had a beneficial ownership in them. In 60 Calcutta pages 1316 (Bhupendranath Bangha versus Girid arlal agar, which was a case of alleged criminal breach of trust by a -ner of a tnership property it has been held by their Lordships that each partner being a co-owner of the whole of the common stock of the partnership it is difficult to conceive how a partner can be entrusted with dominion over his own property and how he could dishonestly misappropriate it or convert it to his own use. Likewise, I should think that it is impossible to conceive how the accused who has got beneficial owner ship of the property of the mutt can be entrusted with and how he could dishonestly misappropriate his own properties. It is rather a difficult and impossible

job for the prosecution to prove that any of the articles in questi was specifically v st d i. t e ne. of the mutt as tr stee and the prosecution has not attempted to prove it.

11. Even assuming that the articles in question are propert specifically vested in the mutt as trust-e, the prosecution has to prove that whe the accused assumed management of the mutt at the end of 1939 or the begi ning of 1940 from the previous manager Dasachar, these articles were either entrusted or handed over to the accused. The only direct eivdence reg rding the handing- over or th entr stment by Dasachar to the accused is that of Srinivasa Mithanthaya (P..5) P. .5 is the anager ot the Sedal Mutt, which is one of the other mutts in Udipi. P. .5 woul say in his evidence that at the time of handing over charge of managem nt by Dasachar to the accused about the end of 193 or in the begin ing of 1940, Dasachar sent for him to witness the handing over of the properties and he went that one late Venkoba Achar the then age t of the dmar Mutt was also prese t, that in the presence of these two and some others the jewellery of the utt were checked with reference to the register and anded over to the accuse and that among the jewellery handed over were the Gold peeta and all its accessories excepting the gold two kattigekolus, two gold covered chamaras gold kaulgie savutu two gold guindis two gold plates and a number of gold padakss and chains.

12. On behalf of the accused it as argued tha the evidence o P.W.5. cannot be relied upon. One Sripathi Achar is the interim trustee of the Sedai Mutt and P.W.5 is the Manager of the Mutt under him. This Sripathi Achar, is the brother-in-law of Sri Anur Lakdhimi-narayana Rao. It is clear from the evidence in this case that Sri Anur Ladshminarayana Rao from th v ry beginning has been working against the accused and that he is taking an active interest in this case. P.W.5. even therefore be easily go t at by Sri Anur Lakshmin arayana Rao and made to ive evidence. Further it would also appear that P.W.5. has get some grievance agai st the accused. The accused in his statement has stated that about 3 or 4 years ago he was invited by P.W.5. to the Inmanga High School of w ich P.W.5 is the Manager, th t when the accused visited the school P.W.5 requested him to give a donatio to the school, that the accused however did not comply wit the request and that as such P.W.5 has got ill-feeling again t the accused. P.W.5 in his evidence would admit that he invited the accused to his school, but he would deny that he requested the accused to give any donation to the school. There is a gold palenq in belonging to the Krishna Temple, which is in the custody and possession of the Krishnapur Mutt. The Pariyayam Swamiars requisition this palanquin ~~belonging to the Krishna Temple which is in the custody and possession of the Krishnapur Mutt. The Pariyayam Swami-rs~~ on important occasion by means of a letter addressed to the Swamiyar of the Krishnapur Mutt. Sodai Mutt was in Periyayam from 1948-50. P.W.5 as Mana er of Sodai Mutt went a letter to the accused requisitioning the palanquin. The accused then insisted that the requisitioning should come from the int rim tr stee himself and he refused to give the palanquin on the letter of P. .5. The int rim trustee ultimately had to write Ex.D.1 himself and get the palanq in. P.W.5 would av felt that he was slighted by the accused and he would have a grievance against the accused on this ground also.

13. P.W.5 has stated in his evide ce tha Dasachar told him as we l as late Venkebachar (the t n agent of A. M utt) that it was to avoid any public talk at a future date that he took th precaution of the handing over charg in the presence of two of the utt ag ts, namely P.W.5 and Venkebachar. If Dasachar were such a car ful man, it is surprising that he did not take a voucher attested by P. .5 and Venkobachar from the accused for havi g r ceiv d th jewels. P. .5 would say that no s ch ack owledgem t was taken by Dasachar from the accused. As already

stated, there is a gold palanquin belonging to Krishnapur Matt, which is in the custody of the accused Matt. When the other jewels and valuable articles were handed over, it is only natural that such an important article as the palanquin would have been handed over and it would not have been omitted. P.W.5 would say that the palanquin was not handed over and that he did not witness the entrustment of the same by Dasachar to the accused. Again, though P.W.5 would say in his evidence that Lakshmikanthachar was invited and was also present to witness the entrustment, P.W.5 did not tell the Deputy Superintendent of Police (P.W.19) about the presence of Venkatachar. P.W.5 would say in his evidence that he did not remain till the entrustment of all the properties were over and that he came away in the middle when the handing over of gold articles had been completed and the handing over of the silver articles had just commenced. It is unlikely that a man who was specially called to witness the entrustment would have gone away in the middle. As already stated, in the first instance the investigation was made by the Circle Inspector Kalliah. P.W.5 was not examined by Kalliah and P.W.5 as put up for the first time before the Deputy Superintendent of Police (P.W.19) when he took up the investigation. Further, when the Deputy Superintendent of Police (P.W.19) first questioned P.W. he did not mention about his witnessing the entrustment of the jewels by Dasachar to the accused. The Deputy Superintendent of Police again examined P.W.5 after 3 or 4 months and it was only then that P.W.5 mentioned about his witnessing the entrustment. P.W.5 is a person who has no compunction to tell lies. In his cross-examination he was asked whether the heirs of the Sodai Matt of this place is the manager had not been given Mulgeni tenure to the wife of the intermediate trustee, daughter of Arul Lakshminarayana Sastrigal, and he chose to say that he is not aware of any such lands. The lease of these lands is evidence by the documents Exs.D.38, 40, 41 and 42.

14. Dasachar is the best person that can speak about the entrustment of the articles made by him to the accused. P.W.19 in his evidence has stated that he questioned Dasachar. Dasachar, however, was not cited as a witness in the charge sheet and he was not been examined. It can be inferred that Dasachar's evidence would not support the prosecution case about the entrustment. In view of all these circumstances the evidence of P.W.5 about the entrustment cannot be relied upon and if his evidence goes there is no other direct evidence about the entrustment of any article to the accused when he assumed management from Dasachar.

15. The prosecution has also sought to prove the entrustment by circumstantial evidence given by P.Ws.1,3,4, 6,7,8, and 15. The evidence of these witnesses is to the effect that after the accused took over the management of the Matt from Dasachar they have seen the various articles mentioned in the charge sheet either in the Matt or in the Krishna temple during the Pariyayam period of the accused. P.W.1 3,4 and 6 are ex-servants of the accused Matt. P.W.7 is the Junior Samayar of Puthigai Matt. P.Ws 8 and 9 are the Inspectors of the Endowment Board. All these witnesses say that during the Pariyayam period of the accused on Navaratri and other festive occasions they have seen the gold peeta with its accessories displayed in the Krishna Temple. As regards the accessories of the peetam there is no uniformity in the evidence of the witnesses. So also as regards the other articles there are discrepancies in the evidence of these witnesses. The question is how far the evidence of these witnesses given out of the memory of what they saw some 6 or 7 years ago can be relied upon. One can understand the witnesses observing an article like the gold peetam and the ability to remember it after the lapse of all these years. But it is difficult to believe that these witnesses should have minutely observed and they would be able now to remember the several articles or accessories placed on the various different layers of the peetam. It is possible that imagination has played its part and helped the witnesses to give the details of the various accessories of the peetam which they saw 6 or 7 years ago.

16. P.W.1 joined the services of the mutt only in 1942 and that too as a clerk. Before that he would have gone to the mutt as a boy to eat and he can not have any knowledge of the mutt or its properties. After joining the services of the mutt also he would not have had much opportunity to see intimately the various articles in question since as clerk he had not to handle the articles. P.W.1 lives in a property belonging to the Sothi mutt, of which Sri Arur Lakshminarayana Rao, the brother-in-law of Sripathi Achar is as already stated, the interim trustee. P.W.1 has admitted that he had to leave the service of the mutt because the accused refused his request for enhanced pay and P.W.1. is one of the witnesses who has been examined by the prosecution to prove how the accused misappropriated the jewels of the mutt. Later when discussing the evidence regarding misappropriation I will show that P.W.1 is a totally unreliable person. For all these reasons P.W.1's evidence ~~regarding misappropriation, I will show that P.W.1 is a totally unreliable person. For all these persons P.W.1's evidence~~ regarding his seeing most of the articles in the mutt cannot be relied upon.

17. P.W.3 has worked in the mutt of the accused during the period prior to the accused taking over the management from Dasachar. Subsequently he worked for some time in the Puthigai Mutt. It was when working in the Puthigai Mutt that he was questioned by the Circle Inspector and the Deputy Superintendent of Police. P.W.7 is the Junior Swamiyar of Puthigai mutt who has got a power of Attorney for management from the senior Swamiyar. How a power of attorney been given to P.W.7 it is really Arur Lakshminarayana Rao and Dasachar who have got real control over the manggement of Puthigai Mutt. Ex.D.20 is the power of attorney given by the Senior Swamiyar of the mutt to the Junior Swamiyar P.W.7. The Power of attorney shows that P.W.7 has to take the accounts for inspection before Sri Arur Lakshminarayana Rao and Dasachar and that the power of attorney can be terminated at any time by the joint notice from the aforesaid two persons. P.W.3 when working in the Puthigai Mutt could easily be made by Arur Lakshmi narayana Rao to give evidence against the accused before the Circle Inspector and the Deputy Superintendent of Police.

18. P.W.4 was working for the accused as a cook from 1940 to 1944. P.W.4 also says that he had to leave the services of the accused Swamiyar because he declined to raise his salary and he was also reported to be disrespectful. As in the case of P.W.1 I will show later when discussing the evidence of actual misappropriation that this witness also is capable of lying. So his evidence about having seen such and such article in the mutt can not be relied upon.

19. P.W.5 is one of the signatories of M.P.1. the complaint sent to the Board. He had admitted that he signed Ex.P.1. without knowing its contents. Ex.P.1 contains a list of the jewels alleged to have been misappropriated by the accused. P.W.6 admits that there was dispute between the accused and his family as regards the hereditary right of the family of P.W.5 to the archakaship of one of the branch mutts of the accused and that there was an exchange of registered notices between P.W.6 and the accused. He also admits that the accused filed a suit and got the cousin of P.W.5 evicted from the mutt property, that in the suit his cousin claimed a set off of rent and that his contentions were not upheld. Surely he must be ill-disposed towards the accused and his evidence also cannot be relied upon.

** And the list contains even the pandaram which has not been misappropriated by the accused.

20. P.W.7 as already stated, is the Junior Swamiyar of Puthigai mutt who has got a power of attorney from the senior Swamiyar, which power can at any moment be terminated by Arur Lakshminarayana Rao and Dasachar. P.W.7 is evidently under the thumb of Arur Lakshminarayana Rao and Dasachar and his evidence cannot be safely relied upon.

21. P.Ws. 8 and 9 being the officers of the Endowments Board their evidence is not [illegible] disputed. The Deputy Superintendent of Police during the course of his investigation wanted to examine P.W.8 and so one wrote a letter to the Secretary, Hindu Religious Endowments Board to send P.W.8 to appear before him. Ex.P.44, ~~dated 12.1.1959 is the reply received by the Deputy~~

dated 12.1.50 is the reply received by the Deputy Superintendent of police to his letter. Ex.D.44. would show that P.W.8 was then candid enough to say that after a lapse of 6 years he was not in a position to say which jewels of the mutt were missing. It cannot be that six months later when he gave evidence his memory power would have revived. It is clear that subsequent pressure had been put on him and that it is at the instance of the Board he has given evidence. As in the case of P.W.8, P.W.9 also cannot be expected to remember after a lapse of 6 years all the jewels of the mutt and his evidence must have been procured by the Board. It is therefore difficult for me to believe P.Ws. 8 and 9 when they pretend to remember and they enumerate from their memory the various items of the accessories of the peetah, which they saw during their visits to the Krishna Temple several years ago.

22. P.W.15 is another witness who in 1944 during Navarathiri saw the peetah and its accessories. The occasion for his going there is to take three advocates alleged to have been invited by the accused Swamiyar for Navarathiri. Ex.D.18 shows that one of the advocates alleged to have been invited and taken by P.W.15 for 1944 Navarathiri was dead even in 1943. So the evidence of P.W.15 that in 1944 Navarathiri he had been to Surathkal and that there he saw the peetah cannot be relied upon.

23. The documentary evidence on the prosecution side itself shows that Dasachar, who was managing the mutt affairs during the period of the previous Swamiyar had sold a peetah even in 1934. There is no reliable evidence to show that besides the one sold the accused mutt had another gold peetah. The evidence of P.W.6 that the accused mutt had 2 gold peetahs cannot be relied upon. The only peetah which the mutt had having been sold away by Dasachar in 1934, the evidence of P.Ws that there was the gold peetah in 1942 and 1943 during the Pariyayam period of the accused can be only false. On the whole, the prosecution evidence direct and circumstantial regarding the entrustment of any of the articles in question is not reliable and it cannot be safely acted upon.

24. Assuming that the prosecution has proved the entrustment, the point next to be considered is whether the prosecution has succeeded in proving that any of the articles so entrusted has been misappropriated by the accused. To prove misappropriation, there must be evidence of some kind of conversion i.e., a wrongful diversion to his own purposes or a purpose not consistent with law or contract or in other words dishonest actual user of the articles by the accused in violation of a direction of a law or contract. The mere fact that the accused has retained the articles or that he has failed to account for the articles with which he was entrusted is not sufficient to establish that he committed the offence of criminal breach of trustee the decision reported in Narasimha versus Krishnan (A.I.R. 1940 Madras page 329) In the present case except as regards one sovereignmala, Gundusaras, gold bangles and two kalideepas no evidence has been adduced on the prosecution side to show that the accused had either sold or otherwise converted the articles in question to his own use. As regards the sovereign mala there is the evidence of P.W.1. that the accused got the sovereignmala melted and got made a gold belt through one Krishna Sait, that he gifted the gold belt to one Appi alias Lilly alias Vilasa Kumari whom he was keeping as a concubine and that the accused distributed the remaining sovereigns between his two sisters. The evidence of P.W.1 that the accused was keeping Appi as concubine is corroborated by P.W.4. According to the evidence of P.W.1 the accused was keeping the concubine in the mutt itself. It is too much to think that even if the accused was inclined in that way he would have been so foolishly bold to keep the concubine openly in the mutt itself. When examined by the Circle Inspector, P.W.1 did not mention a word about Appi. So the evidence of P.Ws 1 and 4 that the accused was keeping Appi as a concubine can be only false. When examined by the Circle Inspector who first investigated the case P.W.1 did not mention that a gold belt was got made by the accused through Krishna Sait and presented to Appi. Krishna Sait who is alleged to have made the gold belt has not been examined.

In the examination in chief P.W.1 said that the melting of the gold soverei ns also was do e by Krishna Sait but in cross-examinatio P.W.1 says t at the soverei nmala was got melted through one Laksmana sari and it was only the gold ingot that was given to Krishna Sait for making the belt. P.W.1 would say that P.W.4 saw the handing over of the gold ingot by the accused to Krishna Sait for making the belt. P.W.4 does not speak about it in his evidence. P.W.1 says that one Vittal Bhat and Vasudeva Rao saw the gift of the belt by the accused to Appi. Both Vittal Bhat and Vasudeva Rao have not been examined. It is difficult to believe that the presents of the gold belt to his concubine would have been so openly made by the accused, that persons like P.W.1 and others could witness it. P.W.1 says that besides himself, P.W.4 and 2 others saw the giving of the sovereigns by the accused to his sisters. P.W.4, however, does not say in his evidence that he saw this. The two others alleged to have seen the gift of the sovereigns by the accused have not been examined. So the evidence of P.W.1 about the melting of the sovereignmala and the gift of the gold belt by the accused to his concubine and also his evidence regarding the gift of the sovereigns out of the sovereign mala to his sisters cannot be believed.

25. P.W.2 is one Saka Asari, who is alleged to have melted a gold Gundusara and a pair of gold bangles for the accused. The evidence of P.W.2 is sought to be corroborated by P.W.4 but P.W.4 would say that not one Gundusara and one pair of bangles but one pair of Gundusaras and 4 pairs of bangles were got melted by the accused through P.W.2. The evidence of P.W.2 shows that he is not at all a respectable witness. Further, he had got a reason to be aggrieved against the accused, because he was evicted by the accused from the house in which he was living. Even assuming that the accused got some Gundusaras and bangles melted, there is no evidence as to what the accused did with the gold ingot. In the absence of any evidence to show that he made a dishonest user of the gold ingot for himself, he cannot be said to have committed misappropriation in respect of the gund sara and bangles.

26 P.W.4 would say in his evidence that the accused got melted two kaladeepas by one Bhajanga Asari. Bhajanga Asari has been examined as D.W.2 and he has denied that he melted any gold article for the accused. The evidence of D.W.2 would go to show that he was being pressed to give evidence against the accused, that since he refused, Arur Lakshminarayana Rao's son who is the Executive Officer appointed by the Board for the accused mutt under the scheme, was threatening him and that P.W.2 had to send a petition Ex. B.14. to the District Superintendent of Police. The evidence of P.W.4 about the melting of gold kaladeepas cannot also be relied upon. Further there is no evidence that after the melting of the kaladeepas the accused in any way made any dishonest user of the gold ingot.

27. P.W.s 15 and 16 have given evidence that in March 1947 the accused has purchased a house in Mangalore in the name of his father for Rs.20,000/- The prosecution relies upon this as a piece of circumstantial evidence to show that the accused must have misappropriated the jewels of the mutt. P.W.15 is a small eni tenant of the mutt of the accused under a lease granted by the previous Swamiar. He can be made to give evidence by Sri Arur Lakshminaraya-na Rao, whose son is the Executive Officer of the mutt. P.W.16 is a common scribe and is not a respectable person and who has given evidence that the purchase was made by the father of the accused and not the accused. Even assuming that the purchase was made by the accused it is impossible to infer that the money for the purchase was got by sale of misappropriated jewels of the mutt, in the absence of any evidence on the prosecution side about the sale of any jewels of the mutt by the accused.

Witness . Bali evidence cannot be preferred to that of D.W.4 Mahalingeshwara Bhat

28. Thus, there is no reliable evidence on the prosecution side to show that the accused has either disposed of or converted to his own use any of the articles of the mutt.

29. Thus on a consideration of the entire prosecution evidence I find that even if the present charge is to be altered there is not a single item of property in respect of which a new charge can be framed and the accused convicted.

30. In the result I find the accused not guilty under the charge framed and I acquit him.

(Dictated to the Stenographer, transcribed by him, corrected by me and pronounced in open court this thirty first day of October 1952.)

(sd.) RAMA VARMA,
District Magistrate.

(True copy)

IN THE COURT OF THE DISTRICT MAGISTRATE OF COIMBATORE AND THE NILGIRIS COIMBATORE.

Judgment in Calendar Case No.421 of 1952 on the file of the District Magistrate of Coimbatore.

...

Complainant: Deputy Superintendent of Police, Udipi,
(Crime No 103/49.)
Accused: Vidhyarathna Theertha Swamiyar.
Offence: Criminal Breach of Trust, Section 409 I.P.C.
Finding: Not guilty.
Sentence: Acquitted under section 258/(1) Cr.P.C.

(Sd. RAMA VARMA)
Dt.Magistrate.

(True copy).

1. Serial No.
2. Name. Vidhyarathna Theertha Swamiyar.
3. Father's name: Vidyapurna Theertha Swamiyar.
4. Caste or Religion: Shivalli Brahmin Hindu.
5. Occupation: Swamiyar, Krishnapur Mutt.
6. Residence - Surathkal. (7) Age: 31.
8. Occurrence: On or about May 1939.
9. Complaint: 26.7.1949
10. Appearance of the accused: 17. .1952 before the Dt.Magistrate, Coimbatore.
11. Release on bail ....
12. Commencement of trial: On 13.10.52 -(In this court).
13. Close of trial - 15.10.1952.
14. Sentence or order - 31.10.1952.
15. Explanation for delay. .....

(True copy)

Calendar Case No. 421/52.

LIST OF WITNESSES FOR THE PROSECUTION.

1.Krishnaraj Thanthiri
2. Shankarachar
3. Gopalachar
4. Rama Upadyaya
5. Srinivasa Mithanthaya
6. Hanumanthachar
7. Sujana Adathitha Deepathangal
8. Sri K.Ranganatha Rao.B.A.,
9. Sri V.P.Madhava Rao.
10. Sri P.Nambudhiri Padmanabha Nambudhiri
11. Sri Nagesh Kamath.
12. Srikesava Bhatt.
13. Narasimha Nayak
14. V.Venkatramana Ranjithaya
15. V.Babu Rao Patail.
16. A.Venkatarao, Sambhogie.
17. M.S.S.Prabhu, S.I. Sullia.
18. T.Subba Rao, Printer &.
19. Gopala, by S.P. Deepi
20. Sri Lakshminarayana Rao.
21. M.Koya Kutti, S.I. of Police.

LIST OF THE WITNESSES EXAMINED FOR THE DEFENCE.

1. Shethabettu Narayappayya.
2. Bhujanga Acharya.
3. P.M. Hegde.
4. K.Balakrishna Rao.
5. Shanta Rama Rao.
6. Lakshminarayana Bhat.
7. Dr.P.B.Achar.
8. Gururaja Shanbhiri.
9. Gopalakrishna Acharya.
10. K.Padbantha Acharya.
11. Sri Pejavar Mutt Samiyar.
12. Ramanath Kudva.
13. Vasudevamayya
14. Sri Sirur Mutt Swamiyar.

LIST OF EXHIBITS MARKED FOR THE PROSECUTION.

P1.	dated 23-10-46	Petition filed by P.W.6 and others to the President Bd. of Madras.
P1(a)	do do	Signature of P.W.6 on P1.
P2.	do 11-9-48	Statement of P.W.6 recorde by the Inspector, T.A.B.Board, Madras.
P3.	do 15-1-43	Copy of monthly magazine run by Gopalachar Photo in ex.P3.
P4(a)	do 15-4-43	Vide ex.P3 magazine.
P4(a)		Photo of accused in ex.P4.
P 5	15-12-43	Magazine. Vide ex.P3.
P.5(a)	do	Photo of accused in ex.P5
P 6.	do 1-8-46	Inventory showing the articles in the custody of the accused.
P.7	do do	Inspection note of the Commissioner, regarding Krishnapur Mutt.
P.8	do 6-12-46	A.C.B.Board's memo to Commissioner of ex.P7
P.9	do 31-8-47	Report of the Local Officer regarding the correctness of ex.P6 etc.
P.10.	do 4-10-45	Register of properties of Krishnapur Mutt.
P.10(a)	do 27-7-45	Copy of the list under Section 33 of the Act
P.11.	do 5-9-45	office copy of the direction given to the accused by Assistant Commissioner.
P.12.	do 5-2-46	Reminder sent to the accused by A.C.
P.13.	do 27-5-47	Office copy of another reminder sent to accused.
P.14.	do 31-12-45	Report of ... to the Secretary, T.A.B. Board Madras-Madras.

List

LIST OF EXHIBITS FOR PROSECUTION

P.15.	Dated 6-6-49	Complaint of Secretary against the accused to the D.S.P.
P.16.	do 9-1-46	District Court judgement in O.S. No. 1/47.
		1943 Inventory of articles of Krishnapur Mutt (Copy of Ex.P6)
P.17(a)	22-4-43	Endorsement of Assistant Commissioner.
P.18	do 12-5-43	Board's memo to the Inspector, H.R.E.Board.
P.19	do 25-1-44	Copy of Inspector to Ex.P.18.
P. 20	do 7-2-39	True extract from Loan Register L.No. 170/39
P.21	do 16-6-39	True copy of an authorisation from Dasachar.
P.22	do 26-3-48	True extract from the Ledger of L.No. 42 of 42.
P.23.	do 23-8-38	True extract of the Loan Ledger relating to L.No. 710/35.
P.24	do 2-10-37	True extract from the Loan Register regarding L.No. 638/37
P.24(a)	do	Copy of Yadast describing jewels pledged under Ex.P. 24.
P.25	do 3-7-40	Extract from the Loan register regarding L. o. 125/40.
P.25(a)	do 3-7-40	Extract from the Loan Register regarding L.No 127/40.
P.25(b)	do 3-7-40	do regarding L.No. 128/40.
P.25(c)	do do	do regarding L.No 129/40.
P.26	do 23-6-33	Extract from the Loan Register regarding Loan No. 501/33.
P.27	do 22-12-48	Certified copy of the village 10(i) register of .No 22. Padukkoli village.
P.28.	do 22-12-49	Counterfoil receipt book maintained by the accused.
P.29	do 27-8-1888	Registered mulgeni chit executed by a tenant in favour of the Krishnapur Mutt.
P.30	do 28-1-28	Extract from the Loan Register of Pingal Nayak Bank regarding the loan obtained through Dasach
P.30(a)	do 5-12-28	True extract of the Loan register L.No 329/28.
P.30(b)	do 7-12-31	do do L. o.873/31.
P.30(c)	do do	do L.No.874/31
P.30(d)	do 4-2-32	do L.No.38/32.
P.30(e)	do 13-12-32	do L. o.867/32.
P.31.	do 31-5-46	Letter of Commissioner H.R.E.Board, Bangalore to H.R.E.Board, Madras.
P.32	do 20-6-46	do
P.33.	do 29-3-46	Registration copy of the sale deed executed by P. Venkataramaniah Document No. 747/46.
P.34	do 2-10-37	Bank extract from the Jewel Register of the Canara Banking Corporation in respect of L.No. 638/37.
P.35	do 23-11-40	Letter of authority to redeem the debt covered by L.No 128/40.
P.36	do 4-8-41	do for L.No. 127/40.
P.37	do 5-1-43	do for L.No.128/40.
P.38	do 2-8-43	do for L.No.129/40.
P.39	do 9-10-49	Yadast for the seizure of articles mentioned in Ex.P.10(4).
P.40	do 10-10-49	Yadast for the seizure of brass and copper vessels of the Krishnapur mutt, Perivoi, produced by the Manager.
P.41	do do	Yadast for seizure of brass and copper vessels of Krishnapur Mutt, Surathkal, produced by accused.
P.41(a)	do	Entrustment of the above items to the Patel.
P.42	do 6-10-49	Yadast for the seizure of Nos. 1 to 13 drawn by P.W.19.
P.34	do 1930-31	Account book of Krishnapur Mutt for the years 1930-31.
P.43(a)		Account book of Krishnapur Mutt for the year 1931-32.

P.43(a)	(1)	30-11-31.	Entries made by Shanbhogue(deceased) Pejavar Rama Rao, regarding the payme of certain charges relating to the M Mutt in Ex.P. 43(a).
P.43(a)	(2)	11-12-31.	
P.43(a)	(3)	17- 2-41.	
P.43(a)	(4)	1-2-32.	
P.43(a)	(5)	11-4-32	
P.43(a)	(6)	15-4-32.	
P.43(a)	(7)	27-7-32.	
P.43(a)	(8)	31-7-32	
P.43(a)	(9)	8-8-32.	
P.43(a)	(10)	14-8-32.	
P.43(a)	(11)	16-8-32.	
P.43(a)	(12)	do.	

P.43(b)	1932-33	Account book of the Krishnapur Mutt for year 1932-33
P.43(b)(i)	13-12-32	Entries made in Ex.P43(b) by Padmanabha Bhatta Ex.Shanbhogue of Krishnapur Mutt.
P.43(c)	1933-34	Account book of Krishnapur Mutt for the year 1933-34.
P.43(c)	(i) 21-12-33	Entries made in Ex.P. 43(c) by Padmanabha Bhatta ex Shanbhogue of Krishnapur Mutt
P.43(c)	(2) 20-8-34	
P.43(c)	(3) 19-9-34	
P.43(c)	(4) 13-10-34	
P.43(d)	1937-38.	Account book of Krishnapur Mutt for the year 1937.38.
P.43(d)	1938.39	Account book of Krishnapur Mutt for the year 1938.39.
P.43(e)(i)	3-1-39	Entries made in Ex.P.43(e) by Padma nabha Bhatta Ex.Shanbhogue of Krishnapur Mutt.
P.43(e)(2)	7-2-39	
P.43(e)(3)	2-11-39	
P.44	do 20-12-49	Search list for the seizure of Ex.P.43 and Ex.P.43(a) to P.43(e)
P.45	do do	List showing the description of the account books seized.
P.46	do 17-2-50	Duplicate of the memo to the accused.
P.46(a)	18-2-50	Acknowledgement of the accused.
P.47	17-8-50	Memo filed by the prosecution for summoning the remaining account books from the accused.
P.48	do 29-7-49	Mahazar for the seizure of MOs 1 to 19 drawn by P.W.21
P.49	do 27-4-50	Judgement in OS. No 25/49.

EXHIBITS MARKED FOR DEFENCE.

Ex.D1.	do	11-5-48	Letter of P.W.8 to accused.
D2.	do	24-9-49	Statement of P.W.5 recorded by P.W.19
D2(a)	do		Contradictory portion marked in Ex.D2.
D3	do	31-7-49	Statement of P.W.4 recorded by C.I. Udip
D3(a) to 3(c)			Contradictory portion marked in Ex.D3.
D4	do	27-7-49	Statement of P.W.1 recorded by C.I. Udi
D4(a to 4(e)			Contradictory portion marked in Ex. D4.
D5	do	28-8-1949	Statement of P.W.19 recorded by P.W.19.
D6(a)	do		Contradictory portion of Ex.D5.
D6	do	9-2-47	Register'd notice to the accused by the counsel for P.W.7
7	do	12-10-47	Xerox copy of the reply sent to P.W.7 on Ex.D6.
D8.	do	23-10-44	Invitation given to accused by the Puthigai Senior Swamiji for Laksha Deepa.
D9	do		Letter of invitation from the Senior Swamiyar of Puttigai Mutt to accused for Periyaya Pooja.
D.10	do		another invitation from Pittigal Senior Swamiyar to accused for Makara Sankramam.
D.11	do	3-7-34	letter from the Senior Swamiyar of Puthigai Mutt to the Predecessor of accused
D.12	do	4-11-48	letter purported to have been written by Senior Puttigai swamiar to accused
D.13	do	12-11-51	Lease deed executed by P.W.15 in favour of Krishnapur Mutt.
D.14	do	11-10-49	Copy of petition to C.M.P.

..14(a)			Postal receipt for ..14.
..14(b)			Acknowledgement from ..'s office for Ex.D.14
D.15	do	30-1-38	Audit report from 3-11-34 to 3-11-37
D.16	do	3-10-38	Commissioner's letter.
D.17	do	15-6-45	Copy of report by D. .5
D.17(a)			Line.
D.17(b)			Portion
D.18	do	29-6-51	Death register extract.
D.19	do	21-3-50	General Power of Attorney.
D.20	do	1-8-42	do
D.21	do	11-1-44)	
D.22	do	28-10-44)	
D.23		25-8-45)	Invitation.
D.24	do	25- -45)	
D.26	do	)	
..27			Day book of Krishnapur Mutt for 1928-29.
D.27(a)		do	Entry dated 2.10.29 in Ex.D.27.
D.28	do	2 -8-45	Registered notice.
D.29	do	30-8-50	Petition for examiner served on the assignee
D.30	do	26-8-51	order of the ..Bo. d.
D.31	do	19-3-51	Receipt of Kanyur swamier.
D.32	do	14-7-51	Notice of Assistant Commissioner, ..H. .D. ord.
D.33	do	19-3-42	Decree in O.S. o 1/47
D.34	do	12-4-35	Registration copy of power of attorney.
..35	do	28-7-39	Birth extract of accused.
D. 36	do	30-3-4)	
..37	do	5-8-49)	Decrees in Ejgeni suits.
..38	do	20-1-47	Judgement.
D.39	do	15-3-49	Registration of Ejgeni chit in favour of Sif o r.arcor.
D.40	do	15-3-48	Ejgeni chit.
..41	do	15-3-48	do.
..42	do	15-3-48	do.
..43	do	28-9-44	Money order acknowledgement.
..T.L OBJ CTS.			
M.Os 1 to 12			Silver articles of the Mutt.
M.O. 13		Silver Kodapana	
0.14			Parts of Silver Mantapa.
M 0.15)			
M.0.16)			Silver plates.
0.17			Samprishta.
M.0.18			Amrithi
Ex.D.44		12-1-50	Letter of Secretary, H.R.E.Bo. d, Madras to Deputy Superintendent of Police, Dept.
Ex. D45			Jewel Register.
Ex.D.46			1940 Rough Day book of Krishnapur Mutt.
Ex D.46(a)		28-10-40	Initial by Dasachar.
Ex D.46(b)		30-10-40	Handwriting of Dasachar.
Ex. .47		8-8-52	True copy of Judgement of ..h court in O.S. o 132/1949.
..T.L OBJ CTS.			
M.Os 1 to 12			Silver articles of the Mutt.
M.0.13			Silver Kodapana
.0.14			Parts of Silver Mantapa.
M.0.15)			Silver plates
M.0.16)			
M.0.17			Samprishta.
.0.18			Amrithi
M.0.19)			
19(a))			
19(b))			Silver screens.

(Sd) R. V. D.H.

/True copy/

South Kanara Dt. Magistrate's office, Mangalore 1/ -1-53)

1/2 for Dt. Magistrate.

C A L E N D A R C A S E NO. 421 O F 1952

J U D G M E N T
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The accused in this case was chargesheeted by the Deputy Superintendent of Police, Udipi, before the Additional First Class Magistrate, Mangalore for having committed an offence under section 409 I.P.C.,

2. The accused is the Swamiyar of Krishnapur Mutt, which is one of the eight mutts in Udupi established by Sri Madhwacha ya. The previous Swamiyar of Krishnapur Mutt attained Samathi in 1935 without nominating his successor. So the Swamiyar of Puthigal Mutt, which a twin mutt of Krishnapur Mutt, ordained the accused as Swamiyar when he was a minor in 1935. One Dasachar was managing the affairs of the Krishnapur Mutt even during the period of the previous Swamiyar. On account of the minority of the accused Swamiyar, Dasachar was allowed to continue the management of the mutt during the minority of the accused. In 1937, the accused along with his father went to Benares for purposes of studies and he returned to Udupi in 1939. The accused attained majority in 1939. In the end of June 1939 or the beginning of 1940 the accused took over the management from Dasachar and thereafter he himself was managing the affairs of the mutt. There is no Matathipathi for the Sri Krishna Mutt in Udupi. But the Swamiyar of each of the 8 mutts in turn presides over the temple of Sri Krishna every two years in every 16 years. At every change of Swamiyar at the end of two years a festival known as Pariyayam is celebrated a very grand scale. The turn of the Krishnapur Mutt came in January 1942 and the accused was the Pariyayam Swamiyar of the Krishna Mutt or Temple from January 1942 to January 1944. The succeeding two years was the turn of the Puthigal Mutt. Under section 38 of the Madras Hindu Religious and Charitable Endowments Act every mutt has to maintain a register of jewel and moveables of the mutt in the prescribed form. Every year a return of the moveables has to be sent to the Endowmen Board. The accused was not sending the list of jewels and moveables to the Board and the Board was asking the accused f submission of the same. In 1943 the accused for the first ti sent a list (Ex. P.17) of jewels and moveables. In 1945 he sent another list (Ex.P.10) and in 1946 he sent a list (Ex.P6). The Board was not satisfied with the list

has to be considered. The High courtordered the withdrawal of the case to its own file. The question of law relating to the constitution of the interpretation of the constitution

submitted by the accused and so the Board was asking the accused to send the return in the form prescribed under section 38 of the Act. The accused, however did not do it. In August 1946 the Commissioner I of the Endowments Board inspected the mutt of the accused. The Commissioner then received some representations that the accused Swamiyar had of late been mishandling the jewels and even disposing of them (see Ex.P7) the inspection notes of the Commissioner) On 26.10.1946 the Board received from a petition signed by one Hanumanthachar (P.W.6) and 9 others complainging about the mismanagement of the mutt properties by the accused Swamiyar and inter alia stating that the accused Swamiyar had sold most of the valuables of the mutt worth about Rs.3 lakhs as detailed in the list attached to the petition. The Board directed the Assistant Commissioner Mangalore to make enquiries on the petition (Ex.P.1). After receipt of the report of their Inspector, the Board sent a complaint Ex. P.15. along with a copy of the petition Ex.P.1 to the District Superintendent of Police, Mangalore for investigation. The complaint was forwarded by the Dt.Superintendent of Police throug the Deputy Superintendent of Police, Udipi, to the Circle Inspector of police for personal enquiry and report. The Circle Inspector of police for Malliah, on receipt of the complaint registered a case under section 406 I.P.C. and investigated it. As there were some complaints about the investigation by Malliah, the Deputy Superintendent of Police, Udipi (P.W.19) himself took up the investigation and after completin the investigation he filed the chargesheet against the accused for an offence under section 409 I.P.C. In the chargesheet the case against the accused is that he, being the trustee agent of Krishnapur Mutt and in such capacity, on or about 9.8.1939 being entrusted with certain properties to sit pesta with its accessories consisting of three gold samphstas, six gold prabhalas with gold umbrellas gold matha and Jalari gold nagasampigasaras, gold ashtapathimantapam for personal chief deity gold prabhalas with gold umbrellas gold pakke and naisani for theertha gold harivana two gold kaludsepas two gold arathis two gold kattikalus, gold cases balamurishanka gold padakas etc., worth in all about one lakh of rupees committed criminal breach of trust with respect to the said properties between and 1946.

3. The prosecution examined 19 witnesses before the Additional First Class Magistrate South Kanara. After examination of the P.W.s the accused was questioned a charge under section 409 I.P.C. was framed againt him. The accused pleaded not guilty to the charge. The P.Ws. were further cross-examined by the accused and 15 witnesses were examined for the defence. After the trial was closed and when the case was pending judgment the accused moved the High Court to withdraw the case from the file of the Additionnl First Class Magistrate, South Kanara to the file of the High Court on the ground that an important question of law relating to the interpretation of the constitution was considered by their Lordships of the High Court in another case reported in 1952, I M.L.J. page 557, (Sri Shirur Mutt versus the Commissioner Hindu Religious Endowments Board Madras. After the question of law had been answered, according to law. As permitted by the judgment of the High Court the accused recalled P.W.19 and D.Ws. 5 and 15 and further cross-examined and further examined them respectively. court to this court for dispo ***this case was transferred by the High

4. The charge framed by the Additional First Class Magistrate, South Kanara runs as follows:-

"I, Solomon Joshua, First Additional First Class Magistrate, South Kanara, hereby charge you Vidyarathna Thirtha Swamiar of the Krishnapur Mutt, Udipi as follows:-

That you the aforesaid Vidyarathna Thirtha Swamiar being the trustee (agent) of the Sri Kalimardhana Krishna Devaru of the Krishnapur Mutt, Udipi and in such capacity being entrusted on or about the end of 1939 or beginning of 1940 with the mutt ornaments and jewels in silver and gold etc., costing in all about Rs.3,00,000/- (Three lakhs) between 1939 and 1946, committed criminal breach of trust with respect to some of the aforesaid properties, costing in the aggregate about Rs.1,00,000 (one lakh) as mentioned in the list attached to this charge and thereby committed an offence punishable

under section 409 of the Indian Penal Code and within my cognizance and I hereby direct that you be tried before me on the aforesaid charge '

"I. Peeta with its accessories viz., one big gold prabhala with lion face and serpenthood with three layered gold umbrella, gold pakkes, gold naishanis gold matta six gold prabhalas with umbrella, three big gold sampushtas, three small sampushtas gold chamaras, naga-sampige saras, gold gundusaras, gold ashtapathi mantapa, gold naksha-kshamala, gold padakas with precious stones, gold coronets with precious stones, sovereign and half sovereign saras, gold Jalati.

II. Gold arathis, gold harivanas, gold kalasa, gold kowlige, Soutu, two gold kattigekolus, two gold kaludespas, gold darpana, gold parrots gold uncased righthanded balamurishanka gold padakas.

III. Silver kodapanas silver plates, silver arathis, silver rangala silver kowliges and soutus. silver chembus silver amrathis, silver ca sampushtas, silver guindis, silver padukas etc.'.

5. On behalf of the accused it is contended that the charge framed is an illegal one and that he cannot be convicted on this charge. This contention of the accused is in my opinion a valid one. The charge framed against the accused is bad in several ways. Section 233 of the criminal procedure code requires that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 234, 235, 236 and 239. In the present case the accused is charged with one having committed breach of trust in respect of several items of property and not money. Section 222 (b) Cr.P.C. will not therefore apply and even assuming that all these breaches of trust took place within one year, it is not feasible to treat the breach of trust of the several items of properties as one offence. The Breach of trust in respect of each item property is a separate offence and a separate charge has to be framed for each of them.

6. The charge is also bad and defective for being very indefinite vague and embarrassing. The list of properties annexed to the charge sheet that in the case of most of the items the number has not been specified ~~that in the case of most of the items the number has not been specified~~. The approximate weight of the various items also has not been given. So also the approximate time of the commission each breach of trust has not been given. The decision reported in I.L.R. 63, Calcutta, page 16, Abinashchandra Sarkhar versus Emeror lays down that since section 405 of the Indian Penal Code covers dishonest misappropriation, dishonest conversion, dishonest used or disposal in violation of a direction of law or of a legal contract or dishonestly suffering any other person to do it, it is necessary that the charge under section 409 and should indicate which of these several offences was intended and that further the charge should state who made the alleged entrustment or who suffered from the alleged breach of trust. These particulars are also wanting in the charge framed in this case. I am therefore of opinion that the charge as framed is illegal and the accused cannot be convicted on this charge.

7. There is also another important defect in the conduct of the prosecution. As already stated, the investigation of the case was first done by the Circle Inspector of Police viz. Mr.K.V.Mallaya. The prosecution has strangely not examined Mr.Mallaya. To bring out the contradiction made by some of the P.Ws the section 162 statements of the witnesses recorded by Mr.Mallya have been marked. This procedure of exhibiting the section 162 statements is illegal and these exhibits have to be ignored. The consequence is that the accused would be prejudiced and he cannot elicit the contradictions

made by the P.Ws in the absence of the examination of Mr.Mallaya by the prosecution.

8. On behalf of the prosecution it is argued that if the charge framed is bad, thecourt can suitably alter it under section 227 Cr.P.C. and that the defect of non-examination of Mr.Mallaya can be removed by now examing him. If the charge is to be altered and new charges are to be framed against the accused we can only frame at best three charges for criminalbreach of trust in respect of three items of properties committed within the period of one year, since otherwise it will offend the provisions of section 334 (1) Cr.P C. On behalf of the accused it is pointed out that on the evidence on record no case of breach of trust in respect of any item of property has been made -out.so as to warrant the framing of any charge against the accused andconvictin him under it. Further, it is argued that if new charge is framed, it will involve further examination of all witnesses, that practically a de novo trial has to be conducted, that the prosecution in this case is not a bona fide one, that the petition Ex.P.1 was one got up to support the framing of a scheme by the Board, notice of which had been given by the Board already in 1945, that because the accused file a suit and fought against the scheme framed by the Board in 1946 and later filed an appeal to the High Court. The Board after a lapse of 2½ years filed the complaint Ex.P.15 just to blackmail and silence the accused, that the accused has been sufficiently harrassed and that justice does not require that he should be further persecuted by the court altering the charge and framing new charges and making the accused to stand a de novo trial.

9. Before discussing the evidence on the prosecution side, it is necessary to state what are the points which the prosecution has to prove to sustain a charge of criminal breach of trust under section 409 I.P.C. against the accused. Firstly the prosecution has to establish that there was an entrustment of property to the accused and that the entrustment to him was in his capacity as a trustee; secondly the prosecution has to prove that there was either a misappropriation of property conversion for his own use, user or disposal in violation of a legal direction oflaw or any legal contract, thirdly that the misappropriation or conversion for his own use, user or disposal was with a dishonest intention.

10. In the case reported in 1952 I M.L.J., page 857 (Shirur Mutt versus the Commissioner, Hindu Religious Endowments Board, Madras, the position of the Head of a Mutt with relation to the properties of the mutt has been clearly laid down. It has been held therein that the head of a mutt is not a trustee in the sense that word is used inthe law of trust and his position cannot be brought under any legal label known to English jurisprudence that it is only if it is established that any specific property has been vested as a trustee in theka head of the mutt that he become a trustee to that extent and in respect of that property and that in respect of the properties hot so specifically vested as trustee he has the beneficial owner ship and he is not liable to account for their income much less to the pathakanikas. So in the present case it is necessary for the prosecution to prove not only that the articles in respect of which the accused is charged belonged to themutt but that these articles are specific articles vested in the head of the mutt as trustee. If the articles are proved, to be only the ordinary property of the mutt, it would follow that to some extent the accused had a beneficial ownership in them. In 60 Calcutta pages 1316 (Bhupendranath Sangha versus Giridharlal Nagar, which was a case of alleged criminal breach of trust by a partner of partnership property it has been held by their Lordships that each partner being a co-owner of the whole of the common stock of the partnership it is difficult to conceive how a partner can be entrusted with a dominion over his own property and how he could dishonestly misappropriate it or convert it to his own use. Likewise, I should think that it is impossible to conceive how the accused who has got beneficial owner ship of the property of the mutt can be entrusted with and how he could dishonestly misappropriate his own properties. It is rather a difficult and impossible

job for the prosecution to prove that any of the articles in question was specifically vested in the head of the mutt as trustee and the prosecution has not attempted to prove it.

11. Even assuming that the articles in question are properties specifically vested in the mutt as trustee, the prosecution has to prove that when the accused assumed management of the mutt at the end of 1939 or the beginning of 1949 from the previous manager Dasachar, these articles were either entrusted or handed over to the accused. The only direct evidence regarding the handing over or the entrustment by Dasachar to the accused is that of Srinivasa Mithanthaya (P.W.5) P.W.5 is the Manager of the Sedal Mutt, which is one of the other mutts in Udipi. P.W.5 would say in his evidence that at the time of handing over charge of management by Dasachar to the accused about the end of 1939 or in the beginning of 1940, Dasachar sent for him to witness the handing over of the properties and he went that one late Venkoba Achar the then agent of the Admar Mutt was also present, that in the presence of these two and some others the jewellery of the mutt were checked with reference to the register and handed over to the accused and that among the jewellery handed over were the Gold peetah and all its accessories excepting the gold matapathi, two kattigekolus, two gold covered chamaras gold kaulgie savutu two gold guindis two gold plates and a number of gold padakas and chains.

12. On behalf of the accused it is argued that the evidence of P.W.5. cannot be relied upon. One Sripathi Achar is the interim trustee of the Sedai Mutta and P.W.5 is the Manager of the Mutt under him. This Sripathi Ahhar, is the brother-in-law of Sri Arur Lakdhimi-narayana Rao. It is clear from the evidence in this case that Sri Arur Ladshminarayana Rao from the very beginning has been working against the accused and that he is taking on active interest in this case. P.W.5. even therefore be easily got at by Sri Anur Lakshminarayam Rao and made to give evidence. Further it would also appear that P.W.5. has got some grievance against the accused. The accused in his statement has stated that about 3 or 4 years ago he was invited by P.W.5. to the Innanga High School of which P.W.5 is the Manager, that when the accused visited the school P.W.5 requested him to give a donation to the school, that the accused however did not comply with the request and that as such P.W.5 has got ill-feeling against the accused. P.W.5 in his evidence would admit that he invited the accused to his school, but he would deny that he requested the accused to give any donation to the school. There is a gold palanquin belonging to the Krishna Temple, which is in the custody and possession of the Krishnapur Mutt. The Pariyayam Swamiars requisition this palanquin ~~belegging-to-the-Krishna-Temple-which-is-in-the-custody and-possession-of-the-Krishnapur-Mutt.-The-Pariyayam-Swamiars~~ on important occasion by means of a letter addressed to the Swamiyar of the Krishnapur Mutt. Sodai Mutt was in Periyayam from 1948-50. P.W.5 as Manager of Sodai Mutt went a letter to the accused requisitioning the palanquin. The accused then insisted that the requisitionin should come from the interim trustee himself and he refused to give the palanquin on the letter of P.W.5. The interim trustee ultimately had to write Ex.D.1 himself and get the palanquin. P.W.5 would have felt that he was slighted by the accused and he would have a grievance against the accused on this ground also.

13. P.W.5 has stated in his evidence that Dasachar told him as well as late Venkebachar (the then Agent of ADMAR Mutt) that it was to avoid any public talk at a future date that he took t prosecution of the handing over charge in the presence of two of the mutt agents, namely P.W.5 and Venkebachar. If Dasachar were such a careful men, it is surprising that he did not take a voucher attested by P.W.5 and Venkobachar from the accused for having received the jewels. P.W.5 would say that no such acknowledgement was taken by Dasachar from the accused. As already

stated, there is a gold palanquin belonging to Krishnapur Mutt, which is in the custody of the accused mutt. When the other jewels and valuable articles were handed over, it is only natural that such an important article as the palanquin would have been handed over and it would not have been omitted. P.W.5 would say that the palanquin was not handed over and that he did not witness the entrustment of the same by Dasachar to the accused. Again, though P.W.5 would now say in his evidence that late Venkebachar was invited and he was also present to witness the entrustment, P.W.5 did not tell the Deputy Superintendent of Police (P.W.19) about the presence of Venkebachar. P.W.5 would say in his evidence that he did not remain till the entrustment of all the properties were over and that he came away in the middle when the handing over of gold articles had been completed and the handing over of the silver articles had just commended. It is unlikely that a a man who was specially called to witness the entrustment would hav have gone away in the middle. As already stated, in the first instance the investigation was made by the Circle Inspector Malliah. P.W.5 was not examined by Malliah and P.W.5 was put up for the first time before the Deputy Superintendent of Police (P.W.19) when he took up the investigation. Further, when the Deputy Superintendent of Police (P.W.19) first questioned P.W.5 he did not mention about his witnessing the entrustment of the jewels by Dasachar to the accused. The Deputy Superintendent of Police again examined P.W.5 after 3 or 4 months and it was only then that P.W.5 mentioned about his witnessing the entrustment. P.W.5 is a person who has no compunction to tell lies. In his cross-examination he was asked whether the lands of the Sodai Mutt of which he is the Manager had not been given on Mulgeni tenure to the wife of the interim trustee, daughter of Arur Lakshminarayana Rao and others, he had the courage to say that he is not aware of any such lands. The lease of these lands is evidence by the documents Exs.D.39, 40, 41 and 42.

14. Dasachar is the best person the speak about the entrustment of the articles made by him to the accused. P.W.19. in his evidence had asmitted that he questioned Dasachar. Dasachar, was, however not cited as a witness in the chargesheet and he has not been examined. It can be inferred that Dasabhar's evidence would not support the prosecution case about the entrustment. In view of all these circumstances the vidence of P.W.5about the entrustment cannot be relied upon and if his evidence goes there is no other direct evidence about the entrustment of any article to the accused when he assumed management from Dasachar.

15. The prosecution has also sought to prove the entrustment by circumstantial evidence given by P.Ws.1,3,4, 6,7,8,9 and 15. The evidence of these witnesses is to the effect that after the accused took over management of the mutt from Dasachar they have seen the various articles mentioned in the chargesheet either in the mutt or in the Krishna temple during the Pariyayam period of the accused. P.Ws.1,3,4 and 6 are ex-servants of the accused mutt. P.W.7 is the Junior Swamiyar of Puthigal Mutt. P.Ws 8 and 9 are the Inspectors of the Endowment Board. All these witnesses say that during the Pariyayam period of the accused on Navarathri and other festive occasions they have seen the goldpeetah with its accessories displayed in the Krishna Temple. As regards the accessories of the peetah there is no uniformity in the evidence of the withesses. So also as regards the other articles there are discrepancies in the evidence of these witnesses. The question is how far the evidence of these witnesses given out of their memory of what they saw some 6 or 7 years ago can be relied upon. One can understand the witnesses observing an article like the gold peetah and their being able to remember it after the lapse of all these years. But it is difficult to believe that these witnesses would have minutely observed and they would be able now to remember the several articles or accessories placed on the three different layers of the peetah. It is possible that imagination has played its part and helped the witnesses to give the details of the various accessories of the peetah which they saw 6 or 7 years ago.

16. P.W.1 joined the services of the Mutt only in 1942 and tha too as a clerk. Before that he would have gone to the mutt as a boy to eat and he cannot have any knowledge of the mutt or its properties. After joining the services of the mutt also he would not have had much opportunity to know intimately the various articles in question since as clerk he had not to handle the articles. P.W.1. lives in a property belonging to the Sodai mutt, of which Sri Aruru Lakshminarayana Rao, the brother-in-law of Sripathi Achar is as already stated, the interim trustee. P.W.1 has admitted that he had to leave the service of the mutt because the accused refused his request for enhance pay and P.W.1. as one of the witness who has been examined by the prosecution to prove how the accused misappropriated the jewels of the mutt. Later when discussing the evidence regarding misappropriation I will show that P.W.1 is a totally unreliable person. For all these reasons P.W.1's evidence regarding misappropriation, I will show that P.W.1 is a totally unreliable person. For all these reasons P.W.1's evidence regarding his seeing most of the articles in the mutt cannot be relied upon.

**P.W.1 is one of his therefore reason to be disgruntled with the accused.

17. P.W.3 has worked in the mutt of the accused during the period prior to the accused taking over the management from Dasachar. Subsequently he worked for sometime in the Puthigai Mutt. It was when working in the Puthigai Mutt that he was questioned by the Circle Inspector and the Deputy Superintendent of Police. P.W.7 is the Junior Swamiyar of Puthigai Mutt who has got a power of Attorney for management from the senior swamiyar. Though a power of attorney has been given to P.W.7 it is really Arur Lakshminarayana Rao and Dasachar who have got real control over the manggement of Puthigai Mutt. Ex.D.20 is the power of attorney given by the Senior Swamiyar of the mutt to the Junior Swamiyar P.W.7. The Power of Attorney shows that P.W.7 has to place the accounts for inspection before Sri Arur Lakshminarayana Rao and Dasachar and that the power of Attorney can be terminated at any time by the joint notice from the aforesaid two persons. P.W.3 when working in the Puthigai Mutt could easily be made by Arur Lakshminarayana Rao to give evidence against the the accused before the Circle Inspector and the Deputy Superintendent of Police.

18. P.W.4 was working for the accused as a cook from 1940 to 1946, P.W.4 also says that he had to leave the services of the accused Swamiyar because he declined to mise his sialary and he was also reason to be disgruntled. As in the case of P.W.1 I will show later when discussing the evidence of actual misappropriation that this witness also is capable of lying. So his evidence about having seen such and such article in the mutt cannot be relied upon.

19. P.W.6 is one of the signatories of Ex.P.1. the complaint sent to the Board. He had admitted that he signed Ex.P.1. without knowing its contents. Ex.P.1 contains a list of the jewels alleged to have been misappropriated by the accused. P.W.6 admits that there was dispute between the accused and his family as regards the hereditary right of the family of P.W.6 to the archakaship of one of the branch mutts of the accused and that there was an exchange of registered notices between P.W.6 and the accused. He also admits that the accused filed a suit and got the cousin of P.W.6 evicted from the mutt property, that in the suit his cousin claimed a set off of rent and that his contentions were not upheld. Surely he must be ill-disposed towards the accused and his evidence also cannot be relied upon.

20. P.W.7 as already stated, is the Junior Swamiar of Puthi-gai mutt who has got a power of Attorney from the Senior Swamiyar, which power can at any moment be terminated by Arur Lakshminarayana Rao and Dasachar. P.W.7 is evidently under the thumb of Arur Lakshminarayana Rao and Dasachar and his evidence cannot be safely relief upon.

**and the list contains even the mandapam which admittedly has not been misappropriated by the accused.

21. P.Ws. 8 and 9 being the officers of the Endowments Board their evidence is not quite disinterested. The Deputy Superintendent of Police during the course of his investigation wanted to examine P.W.8 and so he wrote a letter to the Secretary, Hindu Religious Endowments Board to send P.W.8 to appear before him. Ex.D.44.

dated 12.1.50 is the reply received by the Deputy Superintendent of police to his letter. Ex.D.44. would show that P.W.8 was then candid enough to say that after a lapse of 6 years he was not in a position to say which jewels of the mutt were missing. It cannot be that six months later when he gave evidence his memory power would have revived. It is clear that subsequent pressure had been put on him and that it is at the instance of the Board he has given evidence. As in the case of P.W.8, P.W.9 also cannot be expected to remember after a lapse of 6 years all the jewels of the Mutt and his evidence must have been procured by the Board. It is therefore difficult for me to believe P.Ws. 8 and 9 when they pretend to remember and they enumerate from their memory the various items of the accessories of the peetah, which they saw during their visits to the Krishna Temple several years ago.

22. P.W.15 is another witness who in 1944 during Navarathiri saw the peetah and its accessories. The occasion for his going there is to take three advocates alleged to have been invited by the accused Swamiyar for Navarathiri. Ex.D.18 shows that one of the advocates alleged to have been invited and taken by P.W.15 for 1944 Navarathiri was dead even in 1943. So the evidence of P.W.15 that in 1944 Navarathiri he had been to Surathkail andthat there he saw the peetah cannot be relied upon.

23. The documentary evidence on the prosecution side itself shows that Dasachar, who was managing the mutt affairs during the period of the previous Swamiyar had sold a peetah even in 1934. There is no reliable evidence to show that besides the one sold the accused mutt had another gold peetah. The evidence of P.W.6 that the accused mutt had 2 gold peetahs cannot be also relied upon. The only peetah which the mutt had having been sold away by Dasachar in 1934, the evidence of P.Ws that they saw th gold peetah in 1942 and 1943 during the Pariyayam period of the accused can be only false. On the whole, the prosecution evidence direct and circumstantial regar-ding the entrustment of any of the articles in question is not reliable and it cannot be safely acted upon.

24. Assuming that the prosecution has proved the entrustment, the point next to be considered is whether the prosecution has succeeded in proving that any of the articles so entrusted has been misappropriated by the accused. To prove misappropriation, there must be evidence of some kind of conversion i.e., a wrongful diversion to his own purposes or a purpose not consistent with law or contract or in other words dishonest actual user of the articles by the accused in violation of a direction of a law or contract. The mere fact that the accused has retained the articles or that he has failed to account for the articles with which he was entrusted is not sufficient to establish that he committed the offence of criminal breach of trustee the decision reported in versus Krishnan (A.I.R. 1940 Madras page 329) In the present case except as regards one sovereignmala, Gundusaras, gold bangles and two kaludeepas no evidence has been adduced on the prosecution side to show that the accused had either sold or otherwise converted the articles in question to his own use. As regards the sovereign mala there is the evidence of P.W.1. that the accused got the soverignamala melted and got made a gold belt through one Krishna Sait, that he gifted the gold belt to one Appi alias Lilly alias Vilasa Kumari whom he was keeping as a concubine and that the accused distributed the remaining sovereigns between his two sisters. The evidence of P.W.1 that the accused was keeping Appi as concubine is corroborated by P.W.4. According to the evidence of P.W.1 the accused was keeping the concubine in the mutt itself. It is too much to think that even if the accused was inclined in that way he would have been so foolishly bold to keep the concubine openly in the mutt itself. When examined by the Circle Inspector, P.W.1 did not mention a word about Appi. So the evidence of P.Ws 1 and 4 that the accused was keeping Appi as a concubine can be only false. When examined by the Circle Inspector who first investigated the case P.W.1 did not mention that a gold belt was got made by the accused through Krishna Sait and presented to Appi. Krishna Sait who is alleged to have made the gold belt has not been examined.

In the examination in chief P.W.1 said that the melting of the gold sovereigns also was done by Krishna Sait but in cross-examinatio P.W.1 says that the sovereignmala was got melted through one Lakshman Asari and it was only the gold inget that was given to Krishna Sait for making the belt. P.W.1 would say that P.W.4 saw the handing over of the gold ingot by the accused to Krishna Sait for making the belt. P.W.4 does not speak about it in his evidence. P.W.1 says that one Vittal Bhat and ~~X~~ Vasudeva Rao saw the gift of the belt by the accuse to Appi. Both Vittal Bhat and Vasudeva Rao have not been examined. It is difficult to believe that the present of the gold belt to his concubine would have been so openly made by the accused, that persons like P.W.1 and others could witness it. P.W.1 says that besides himself, P.W.4 and 2 others saw the giving of the sovereigns by the accused to his sisters. P.W.4, however, does not say in his evidence that he saw this. The two others alleged to have seen the gift of the sovereigns by the accused have not been examined. So the evidence of P.W.1 about the melting of the sovereignmala and the gift of the gold belt by the accused to his concubine and also his evidence regarding the gift of the sovereigns out of the sovereignmala to his sisters cannot be believed.

25. P.W.2 is one Sankara Asari, who is alleged to have melted a gold Gundusara and a pair of gold bangles for the accused. The evidence of P.W.2 is sought to be corroborated by P.W.4 and P.W.4 would say that not one Gundusara and one pair of bangles but one pair of gundusaras and 4 pairs of bangles were got melted by the accused through P.W.2. The evidence of P.W.2 shows that he is not at all a respectable witness. Further, he has got a reason to be aggrieved against the accused, because he was evicted by the accused from the house in which he was living. Even assuming that the accused got some gundusaras and bangles melted, there is no evidence as to what the accused did with the gold ingot. In the absence of any evidence to show that he made a dishonest user of the gold ingot for himself, he cannot be said to have committed misappropriation in respect of the gundusara and bangles.

26 P.W.4 would say in his evidence that the accused got melted two kaludeepas by one Bhujanga Asari. Bhujanga Asari has been examined as D.W.2 and he has denied that he melted any gold article for the accused. The evidence of D.W.2 would go to show that he was being pressed to give evidence against the accused, that since he refused, Arur Lakshminarayana Rao's son who is the Executive Officer appointed by the Board for the accused mutt under the scheme, was threatening him and that P.W.2 had to send a petition Ex. R.14. to the District Superintendant of Police. The evidence of P.W.4 abou the melting of gold kaludeepas cannot also be relied upon. Further there is no evidence that after the melting of the kaludeepa the accused in any way made any dishonest user of the gold ingot.

27. P.Ws 15 and 16 have given evidence that in March 1946,-t the accused has purchased a house in Mangalore in the name of his father for Rs.20,000/- The prosecution relies upon this as a place of circumstantial evidence to show that the accused must have misappropriated the jewels of the mutt. P.W.15 is a mulgeni tenant of the mutt of the accused under a lease granted by the previous Swamiar. He can be made to give evidence by Sri Arur Lakshminarayana Rao, whose son is the Executive Officer of the Mutt. P.W.16 is a common scribe and is not a respectable person and who has given evidence that the purchase was made by the father of the accused and not the accused. Even assuming that the purchase was made by the accused it is impossible to infer that the money for the purchase was got by sale of misappropriated jewels of the mutt, in the absence of any evidence on the prosecution side about the sale of any jewels of the mutt by the accused.

witness . Their evidence cannot be preferred to that of D.W.4 who is a respectable

28. Thus, there is no reliable evidence on the prosecution side to show that the accused has either disposed of or converted to his own use any of the articles of the mutt.

29. Thus on a consideration of the entire prosecution evidence I find that even if the present charge is to be altered there is not a single item of property in respect of which a new charge can be framed and the accused convicted.

30. In the result I find the accused not guilty under the charge framed and I acquit him.

(Dictated to the Stenographer, transcribed by him, corrected by me and pronounced in open court this thirty first day of October 1952.)

(sd.) RAMA VARMA,
District Magistrate.

(True copy)

IN THE COURT OF THE DISTRICT MAGISTRATE OF COIMBATORE AND THE NILGIRIS COIMBATORE.

Judgment in Calendar Case No.421 of 1952 on the file of the District Magistrate of Coimbatore.

...

Complainant: Deputy Superintendent of Police, Udipi,
(Crime No 103/49.)
Accused: Vidhyarathna Theertha Swamiyar.
Offence: Criminal Breach of Trust, Section 409 I.P.C.
Finding: Not guilty.
Sentence: Acquitted under section 258/(1) Cr.P.C.

(Sd.RAMA VARMA)
Dt.Magistrate.

(True copy).

1.Serial No.
2. Name. Vidhyarathna Theertha Swamiyar.
3.Father's name: Vidhyapurna Theertha Swamiyar.
4.Caste or Religion: Shivalli Brahmin Hindu.
5. Occupation: Swamiyar, Krishnapur Mutt.
6. Residence - Surathkal. (7) Age: 31.
8. Occurrence: On or about May 1939.
9. Complaint: 26.7.1949
10. Appearance of the accused: 17.9.1952 before the Dt.Magistrate, Coimbatore.
11. Release on bail ....
12. Commencement of trial:On 13.10.52 -(In this court).
13. Close of trial - 15.10.1952.
14. Sentence of order- 31.10.1952.
15. Explanation for delay. .....

(True copy)

Calendar Case No. 421/52.

LIST OF WITNESSES FOR THE PROSECUTION.

1.Krishnaraj Thanthiri
2. Shankaracher
3. Gopalachar
4. Rama Upadyaya
5. Srinivasa Mithanthaya
6. Hanumanthachar
7. Sujanandathirtha Sripathangal
8. Sri K.Ranganatha Rao.B.A.,
9. Sric.P.Madhava Rao.
10. Sri P.Nambudhiri Padmanabha Nambudhiri
11. Sri Nagesh Kamath.
12. SriKesava Bhatt.
13. Narasimha Nayak
14. R.Venkatramana Manjithaya
15. K.V.Babu Rao Potail.
16. M.Venkatarao, Shanbhogue.
17. K.S.S.Prabhu, S.I. Sullia.
18. U.Subba Rao, Printer D.
19. N.Gopalan, Dy S.P.Udipi
20. Sri Thoni Lakshminarayana Rao.
21. M.Koya Kutti, S.I. of Police.

LIST OF WITNESSES EXAMINED FOR THE DEFENCE.

1. Chethabettu Naranappayya.
2. Bhujanga Acharya.
3. P.M.Hegde.
4. K.Ananda Rao.
5. Shanta Rama Rao.
6. Lakshminarayana Bhat.
7. Dr.P.G.Achar.
8. Gururaja Thanthiri.
9. Gopalakrishna Acharya.
10. K.Padbantha Acharya.
11. Sri Pejavar Mahh Samiyar.
12. Sri Govinda Rao.
13. Ramanath Kudwa.
14. Vasudevamayya
15. Sri Shirur Mutt Swamiyar.

EXHEBITS MARKED FOR PROSECUTION.

P1.	dated 23-10-46	Petition filed by P.W.6 and others to the President H.R.E.Board Madras.
P1(a)	do do	Signature of P.W.6 on P1.
P2.	do 11-9-47	Statement of P.W.6 recorded by the Inspector, H R.E.Board, Madras.
P3.	do 15-1-43	Copy of monthly magazine run by Rajagopalachar Photo in Ex.P3.
P4(a)	do 16-4-43	Vide Ex.P3 magazine.
P4(a)		Photo of accused in Ex.P4.
P 5	15-12-43	Magazine. Vide Ex.P3.
P.5(a)	do	Photo of accused in EN.P5
P 6.	do 1-8-46	Inventory showing the articles in the custod of the accused.
P.7	do do	Inspection notes of the Commissioner, regarding Krishnapur Mutt.
P.8	do 6-12-46	H.R.E.Board's memo to Commissioner on Ex.P7
P.9	do 31-8-47	Report of the Local Officer regarding the correctness of Ex.P6 etc.
P.10.	do 4-10-45	Register of properties of Krishnapur Mutt.
P.10(a)	do 7-7-45	Copy of the list under Section 33 of the Ac
P.11.	do 5-9-45	office copy of the direction given to the accused by Assistant Commissioner.
P.12.	do 5-2-46	Reminder sent to the accused by A.C.
P.13.	do 27-5-47	Office copy of another reminder sent to accused.
P.14.	do 31-12-45	Report of A.C. to the Secretary, H.R.E. Board under-Madras.

LIST

LIST OF EXHIBITS FOR PROSECUTION

P.15.	dated	6-6-49	Complaint of Secretary against the accused to the D.S.P.
P.16.	do	9-1-46	District Court judgement in C.C.No. 1/47.
		1943	Inventory of articles of Krishnapur Mutt (Copy of Ex.P6)
P.17(a)		22-4-43	Endorsement of Assistant Commissioner.
P. 18	do	12-5-43	Board's memo to the Inspector, H.R.E.Board.
P.19	do	25-1-44	Reply of Inspector to Ex.P.18.
P. 20	do	7-2-39	True extract from Loan Register L.No. 170/39
P.21	do	16-6-39	True copy of an authorisation from Dasachar.
P.22	do	26-3-48	True extract from the Ledger of L.No. 42
P.23.	do	23-8-38	True extract of 42. of the Loan Ledger relating to L.No. 710/35.
P.24	do	2-10-37	True extract from the Loan Register regarding L.No. 638/37
P.24(a)		do	Copy of Yadast describing jewels pledged under EX.P. 24.
P.25	do	3-7-40	Extract from the Loan register regarding L.No. 125/40.
P.25(a)	do	3-7-40	Extract from the Loan Register regarding L.No 127/40.
P.25(b)	do	3-7-40	do regarding L.No. 128/40.
P.25(c)	do	do	do regarding L.No 122/40.
P.26	do	23-6-33	Extract from the Loan register regarding Loan No. 501/33.
P.27	do	22-12-48	Certified copy of the village 10(i) register of H.No 22. Padukkodi village.
P.28.	do	22-12-49	Counterfoil receipt book maintained by the accused.
P.29	do	27-8-1888	Registered mulgeni chit executed by a tenant in favour of the Krishnapur Mutt.
P.30	do	28-1-28	Extract from the Loan Register of Pangal Nayak Bank regarding the loan obtained through Dasach
P 30(a)	do	5-12-20	True extract of the Loan register L.No 329/28.
P.30(b)	do	7-12-313	do do L.No.873/31.
P.30(c)	do	do	do L.No.574/31
P.30(d)	do	4-2-32	do L.No.88/32.
P.30(e)	do	13-12-32	do L.No.867/32.
P.31.	do	31-5-46	Letter of Commissioner H.R.E.Board, Mangalore to H.R.E.Board, Madras.
P.32	do	30-6-46	do
P.33.d	do	29-3-46	Registration copy of the sale deed executed by K.Venkataramaniah Document No. 747/46.
P.34	do	2-10-37	Bank extract from the Jewel Register of the Kanara Banking Corporation in respect of L.No. 638/37.
P.35	do	23-11-40	Letter of authority to redeem the debt covered by L.No 128/40.
P.36	do	4-8-41	do for L.No. 127/40.
P.37	do	5-1-43	do for L.No.128/40.
P.38	do	2-8-43	do for L.No.129/40.
P.39	do	9-10-49	Yadast for the seizure of articles mentioned in Ex.P.10(a).
P.40	do	10-10-49	Yadast for the seizure of brass and copper vessels of the Krishnapur mutt, Udipi, produced by the Manager.
P.41	do	do	Yadast for seizure of brass and copper vessels of Krishnapur Mutt, Surathkal, produced by accused.
P.41(a)		do	Entrustment of the above items to the Patel.
P.42	do	6-10-49	Yadast for the seizure of Nos. 1 to 18 drawn by P.W.19.
P.34	do	1930-31	Account book of Krishnapur Mutt for the years 1930-31.
P.43(a)			Account book of Krishnapur Mutt for the year 1931-32.

P.43(a) (1)	30-11-31.	Entries made by Shanbhogue(deceased) Pajavar Rama Rao, regarding the payment of certain charges relating to the Mutt in ex.P. 43(a).
P.43(a) (2)	11-12-31.	
P.43(a) (3)	17-12-41.	
P.43(a) (4)	4-2-32.	
P.43(a) (5)	11-4-32	
P.43(a) (6)	16-4-32.	
P.43(a) (7)	27-7-32.	
P.43(a) (8)	31-7-32	
P.43(a) (9)	8-8-32.	
P.43(a) (10)	14-8-32.	
P.43(a) (11)	16-8-32.	
P.43(a)(12)	do.	
P.43(b)	1932-33	Account book of the Krishnapur Mutt for year 1932-33
P.43(b)(i)	13-12-32	Entries made in Ex.P43(b) by Padmanabha Bhatta Ex.Shanbhogue of Krishnapur Mutt.
P.43(c)	1933-34	Account book of Krishnapur Mutt for the year 1933-34.
P.43(c) (1)	21-12-33	Entries made in Ex.P. 43(c) by Padmanabha Bhatta ex Shanbhogue of Krishnapur Mutt
P.43(c) (2)	20-8-34	
P.43(c) (3)	19-9-34	
P.43(c))4)	13-10-34	
P.43(d)	1937-38.	Account book of Krishnapur Mutt for the year 1937.38.
P.43(d)	1938.39	Account book of Krishnapur Mutt for the year 1938.39.
P.43(e)(1)	3-1-39	Entries made in Ex.P.43(a) by Padma nabha Bhatta Ex.Shanbhogue of Krishnapur Mutt.
P.43(e)(2)	7-2-39	
P.43(e)(3)	4-11-39	
P.44	do 30-12-49	Search list for the seizure of Ex.P.43 and Ex.P.43(a) to P.43(e)
P.45	do do	List showing the description of the account books seized.
P. 46	do 17-2-50	Duplicate of the memo to the accused.
P.46(a)	18-2-50	Acknowledgement of the accused.
P.47	17-8-50	Memo filed by the prosecution for summoning the remaining account books from the accused
P.48	do 29-7-49	Yadast for the seizure of M.Os 1 to 19 drawn by P.W.21
P.49	do 21-4-50	Judgement IN OS.No 25/49.

EXHIBITS MARKED FOR DEFENCE.

Ex.D1.	do 11-5-48	Letter of P.W.8 to Accused.
D2.	do 24-9-49	Statement of P.W.5 recorded by P.W.19
D2(a)	do	Contradictory portioned marked in Ex.D2.
D3	do 31-7-49	Statement of P.W.4 recorded by C. I.Udipi
D3(a) to 3(c)		Contradictory portion marked in Ex.D3.
D4	do 27-7-49	Statement of P.W.1 recorded by C.I.Udipi.
D4(a) to 4(e)		Contradictory portion marked in Ex D4.
D5	do 28-8-1944	Statementof P.W. 1 recorded by P.W:19.
D6(a)	do	Contradictory portion of Ex.D5.
D6	do 9-2-47	Registered notice to the accused by the counsel for P. W.7
D7	do 12-10-47	True copy of the reply gent to P.W.7 on Ex.D8.
D8.	do 28-10-44	Invitation given to accused by the Puthiga Senior Swamier for Laksha Deepa.
D9	do	Another invitation from the Senior Swamiyar of Puttigai Mutt to accused for Pariyaya Pooja.
D.10	do	Another invitation from Pittigal Senior Swamiyar to accused for Makara Sankaramana
D.11	do 3-7-34	letter from the Senior Swamiyar of Puthig Mutt fo the Predecessor of accused.
D.12	do 4-11-48	letter purported to have been written by Senior Puttigai swamier to accused
D.13	do 12-11-31	Lease of deed executed by P.W.15 in favour Krishnapur Mutt.
D.14	do 11-10-49	Copy of petition to D.S.P.

E.14(a)			Postal receipt for Ex.D.14.
D.14(b)			Acknowledgement from D.S.P's office for Ex.D.14
D.15	do	30-1-38	Audit report from 3-11-34 to 3-11-37
D.16	do	3-10-38	Commissioner's letter.
D.17	do	15-6-45	Copy of report by D.W.5
D.17(a)			List.
D.17(b)			Portion
D.18	do	29-6-51	Death register extract.
D.19	do	21-3-60	General Power of Attorney.
D.20	do	1-8-42	do.
D.21	do	11-1-44)	
D.22	do	28-10-44)	
D.23	do	23-8-45)	Invitation.
D.24	do	25-8-45)	
D.25	do	)	
D.27			Day book of Krishnapur Mutt for 1928-29.
D.27(a)	do		Entry dated 2.10.29 in Ex.D.27.
D.28	do	28-3-45	Registered notice.
D.29	do	30-8-50	Petition of Swamiar Served on the accused.
D.30	do	28-8-51	order of the H.R.E.Board.
D.31	do	19-8-51	Receipt of Kanyur swamier.
D.32	do	14-7-51	Notice of Assistant Commissioner, H.R.E. Board.
D.33	do	19-3-42	Decree in O.S.No 1/47
D.34	do	12-4-35	Registration copy of power of attonney.
D.35	do	28-7-39	Birth extract of accused.
D. 36	do	30-8-46)	
D.37	do	5-8-49)	Decrees in Mugeni suits.
D.38	do	20-1-47	Judgement.
D.39	do	15-3-49	Registration of Mulgeni chit in favour of wife of Mr.Arcor.
D.40	do	15-3-48	Mulgeni chit.
D.41	do	15-3-48	do.
D.42	do	15-3-48	do.
D.43	do	28-9-44	Money order acknowledgement
MATERIAL OBJECTS.			
M.Os 1 to 12			Silver articles of the Mutt.
M.O. 13	Silver Kodapana		
M.O.14			Parts of Silver Mantapa.
M.O.15)			
M.O.16)			Silver plates.
M.O.17			Sampushta.
M.O.18			Amrithi
Ex.D.44		12-1-50	Letter of Secretary, H.R.E.Board, Madras to Deputy Superintendent of Police, Dept.
Ex.D45			Jewel Register.
Ex.D.46			1940 Rough day book of Krishnapur Mutt.
Ex.D.46(a)		28-10-40	Initial by Dasachar.
Ex.D.46(b)	do	30-10-40	Handwriting of Dasachar.
Ex.D.47	do	8-8-52	True copy of Judgement of High court in A.S.No 132/1949.
MATERIAL OBJECTS.			
M.Os 1 to 12			Silver Articles of the Mutt.
M.O.13			Silver Kodapana
M.O.14			Parts of Silver Mantapa.
M.O.15)			Silver plates
M.O.16)			
M.O.17			Sampushta.
M.O.18			Amrithi
M.O.19)			
19(a))			
19(b))			Silver spoons.

/True copy/

South Kanara Dt.Magistrate's office, Mangalore d/ -1-53)

For Dt.Magistrate.

Home Deptt.

ENQ 199 33 Pri II/52

Crl. Justice – C.C. No. 202 of 1950 on the file of the Additional First Class Magistrate, Mangalore, South Kanara Dt. – Request for stay of proceedings and withdrawal of prosecution

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From the Commissioner, Hindu Religious and Charitable Endowments (Adm) Deptt, No. 7268/52-3-Admn 07, 4.3.1952

Sri K. Subraya Aithal, Genl. Agent Sirur Mutt put in a petition to the Govt. requesting that the case pending against Sri Vidya Ratna Teertha Swamiyar of Krishnapur Mutt, Nadiji – C.C. No. 202/50 on the file of the A.F.C.M., South Kanara – may be withdrawn. The remarks of the Collector of South Kanara, through the Commissioner, H.R and C.E. were invited. He was also asked to send a copy of his remarks direct to Govt. On the advance copy of the remarks of the Collector, received in this deptt, the request of the petitioner was examined and the case was sent to R.W. and Regal (courts) on 1-3-1952 (its return is awaited). In that file Secy noted that the remarks of the Comnr. H.R. & C.E. may be awaited. Please see the remarks of the Comnr. at p1 c.f. The Comnr agrees with the Collector of South Kanara and the Dy. Comnr. H.R & C.E. and submits that there are no good grounds for withdrawal of the prosecution especially when it is seen that all that remains to be done in the case is the pronouncement of the judgment and that religious susceptibilities of disciples are seen to be urged to avoid a judgment

The return of the main file may be

awaited till 8.3.1952. For orders.

SE
7.3.52 16
5.3.52

5/3/52.

5/3/52

the return of the main file may be awaited.

5/3